

# Supreme Court of Pennsylvania

## Court of Common Pleas Civil Cover Sheet

Delaware

County

For Prothonotary Use Only:

Docket No:

2023-00418

FILED STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

### Commencement of Action:

- ☒ Complaint ☐ Writ of Summons ☐ Petition  
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:

James L. Baron

Lead Defendant's Name:

The Borough of Folcroft

Are money damages requested? ☐ Yes ☒ No

Dollar Amount Requested: ☐ within arbitration limits  
(check one) ☐ outside arbitration limits

Is this a Class Action Suit? ☐ Yes ☒ No

Is this an MDJ Appeal? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: James J. Merkins, Jr., Esquire

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

**Nature of the Case:** Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

### TORT (do not include Mass Tort)

- ☐ Intentional  
☐ Malicious Prosecution  
☐ Motor Vehicle  
☐ Nuisance  
☐ Premises Liability  
☐ Product Liability (does not include mass tort)  
☐ Slander/Libel/ Defamation  
☐ Other:

### CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff  
☐ Debt Collection: Credit Card  
☐ Debt Collection: Other  
  
☐ Employment Dispute:  
Discrimination  
☐ Employment Dispute: Other  
  
☐ Other:

### CIVIL APPEALS

- Administrative Agencies  
☐ Board of Assessment  
☐ Board of Elections  
☐ Dept. of Transportation  
☐ Statutory Appeal: Other  
  
☐ Zoning Board  
☐ Other:

### MASS TORT

- ☐ Asbestos  
☐ Tobacco  
☐ Toxic Tort - DES  
☐ Toxic Tort - Implant  
☐ Toxic Waste  
☐ Other:

### REAL PROPERTY

- ☐ Ejectment  
☐ Eminent Domain/Condemnation  
☐ Ground Rent  
☐ Landlord/Tenant Dispute  
☐ Mortgage Foreclosure: Residential  
☐ Mortgage Foreclosure: Commercial  
☐ Partition  
☐ Quiet Title  
☐ Other:

### MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration  
☐ Declaratory Judgment  
☐ Mandamus  
☐ Non-Domestic Relations  
Restraining Order  
☐ Quo Warranto  
☐ Replevin  
☒ Other:  
Complaint for Injunctive  
Relief

### PROFESSIONAL LIABILITY

- ☐ Dental  
☐ Legal  
☐ Medical  
☐ Other Professional:

**COHEN SEGLIAS PALLAS  
GREENHALL & FURMAN, P.C.**  
BY: ROY S. COHEN, ESQ.  
BY: MATTHEW L. ERLANGER, ESQ.  
BY: NICHOLAS M. BENCSICS, ESQ.  
Identification Nos. 32342/306855/329261  
1600 Market Street, 32<sup>nd</sup> Floor  
Philadelphia, PA 19103  
rcohen@cohenseglias.com  
merlanger@cohenseglias.com  
nbencsics@cohenseglias.com  
(215) 564-1700

**MUSI, MERKINS, DAUBENBERGER  
& CLARK, LLP**  
BY: THOMAS A. MUSI, JR., ESQ.  
BY: JAMES J. MERKINS, JR., ESQ.  
Identification Nos. 75950/89846  
21 W. Third Street  
Media, PA 19063  
(610) 891-8806

*Attorneys for Plaintiff, James L. Baroni*

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**IN THE COURT OF COMMON PLEAS OF  
DELAWARE COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW**

**JAMES L. BARONI**  
2111 Ravenwood Drive  
Folcroft, PA 19032

Plaintiff

v.

**THE BOROUGH OF FOLCROFT**  
1555 Elmwood Avenue  
Folcroft, PA 19032

and

**RAYMOND T. OPDENAKER &  
SONS, INC. d/b/a OPDENAKER  
TRASH REMOVAL &**

NO.: CV – 2023 –

004188

RECYCLING SERVICES  
8 Elm Avenue  
Aston, PA 19014

Defendants

:  
:  
:  
:  
:

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**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

**LAWYER REFERRAL SERVICE  
FRONT AND LEMON STREETS  
MEDIA, PA 19063  
610-566-6625**

**COHEN SEGLIAS PALLAS  
GREENHALL & FURMAN, P.C.**  
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BY: MATTHEW L. ERLANGER, ESQ.  
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rcohen@cohenseglias.com  
merlanger@cohenseglias.com  
nbencsics@cohenseglias.com  
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NO.: CV – 2023 – 004188

FILED  
2023 MAY 17 PM 3:39  
CLERK OF COURT  
DELAWARE COUNTY  
PENNSYLVANIA

**TRASH REMOVAL &** :  
**RECYCLING SERVICES** :  
8 Elm Avenue :  
Aston, PA 19014 :  
: :  
Defendants :

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### **COMPLAINT**

Plaintiff, James L. Baroni, by and through his undersigned counsel, Cohen Seglias Pallas Greenhall & Furman, P.C. and Musi, Merkins, Daubenberger & Clark, LLP, hereby files this Complaint against Defendant the Borough of Folcroft, and in support thereof aver the following:

#### **Parties**

1. Plaintiff, James L. Baroni ("Mr. Baroni") is an adult individual and owner of the real property located at Folcroft, Pennsylvania 19032.
2. Mr. Baroni pays taxes to the Borough of Folcroft and is not currently in default of his tax obligations.
3. Defendant the Borough of Folcroft (the "Borough") is a Pennsylvania borough with its principal place of business located at 1555 Elmwood Avenue, Folcroft, PA 19032.
4. Defendant Raymond T. Opdenaker & Sons, Inc. d/b/a Opdenaker Trash Removal & Recycling Services ("Opdenaker") is a Pennsylvania corporation with its principal place of business located at 8 Elm Avenue, Aston, PA 19014.
5. Opdenaker was a bidder on the Residential Waste and Recycling Collection Project for the Borough and was awarded the contract as the lowest responsive and responsible bidder for the Project by the Borough.

### **Jurisdiction and Venue**

6. The Court is vested with general, personal jurisdiction over the Borough and Opdenaker because their contacts with the Commonwealth of Pennsylvania are continuous and systematic. 42 Pa.C.S.A. § 5301(a)(2)(iii).

7. The Court is vested with subject matter jurisdiction pursuant to 42 Pa.C.S.A. § 931(a) and Pa. R. Civ. P. 1531.

8. Venue is appropriate because the cause of action arose in Delaware County, Pennsylvania. See Pa. R. Civ. P. 1006(a).

### **Factual Background**

9. H&H Disposal Service, Inc. ("H&H") is a local leader in the waste management industry with twenty-two years' experience providing solid waste and recycling services for several municipalities in Delaware County, with a business address at 1217 Elmwood Avenue, Sharon Hill Borough, Delaware County, Pennsylvania 19079.

10. In addition to providing solid waste and recycling services to the Borough previously, H&H has also provided such services for the following municipalities in Delaware County: Darby Township, Sharon Hill Borough, Norwood Borough, East Lansdowne Township, and Nether Providence Township.

11. H&H has provided residential solid waste and recycling collection services for the Borough for the past eight years dating back to 2015.

12. The contract between H&H and the Borough was set to expire at the end of 2022.

13. In advance of the expiration of the contract, the Borough announced its intention to solicit bids for the Residential Solid Waste & Recycling Collection Project (the "Project") during the fall of 2022.

14. However, due to several errors in the bid documents that the Borough's engineer, Remington & Vernick Engineers, prepared, the Borough did not solicit bids as scheduled and, instead, delayed bidding until the errors were corrected.

15. As a result of the delay, the Borough requested that H&H continued to provide its services on a month-to-month basis from January 2023 through April 2023 under the terms of the prior contract.

16. H&H accepted and agreed to continue to provide its services on a month-to-month basis to the Borough at the same price (\$27,154.56 per month) for which it had been performing under the prior contract.

17. At no time did the Borough and H&H agree that the month-to-month interim basis services would continue at that rate indefinitely or through the end of 2023.

18. In the spring of 2023, the Borough solicited bids for the Project and sent a bid invitation. A true and correct copy of the bid invitation is attached hereto and incorporated herein as **Exhibit A**.

19. Following the bid invitation, Information for Bidders was provided to interested bidders, which H&H's President, Sam Killeen, reviewed on H&H's behalf. A true and correct copy of the Information for Bidders is attached hereto and incorporated herein as **Exhibit B**.

20. The Information for Bidders, at Section 4.02 and 4.03, detailed what must be included in the bid in terms of pricing and reasons for which a bid may be rejected.

21. As is relevant hereto, Section 4.02(A) states the following with respect to what bidders were required to include in the bid price:

The bid submitted must cover the entire cost of the contemplated solid waste and recycling collection in the manner and detail described in the specifications. The price bid for each line item shall cover the entire cost of collection, including all materials, workmanship, and appurtenances necessary for its completion or as implied by description in the specifications, or to be reasonably inferred therefrom. The Not to Exceed cost shall include any costs incurred for disposal at a transfer station; these costs are to be included in the bid price submitted.

(Ex. B).

22. H&H, as well as Opdenaker and another entity submitted bids for the Project.

23. H&H's bid was in the amount of \$2,183,000.00 and H&H was the lowest qualified, responsive, and responsible bidder. A true and correct copy of the Bid Results is attached hereto and incorporated herein as **Exhibit C**.

24. Opdenaker submitted the second lowest bid in the amount of \$2,354,877.77, which was \$171,877.77, or nearly 8%, higher than H&H's bid.

25. On April 12, 2023, Remington & Vernick Engineers advised H&H in writing that H&H was among the low bidders and requested that H&H provide it with original copies of the uploaded bid documents within the next three days. A true and correct copy of the Notice from Remington & Vernick is attached hereto and incorporated as **Exhibit D**.

26. In accordance with the Borough's engineer's request, H&H hand-delivered the requested documents on April 13, 2023.

27. Thereafter, the Borough Manager, Andrew Hayman, engaged Mr. Killeen in a series of discussions regarding H&H's bid and the bid documents H&H had submitted.

28. As a result of these discussions, H&H sent Mr. Hayman a copy of its bid as well as a letter included in its bid that clearly provides Bulk Waste Collection was included in H&H's



overall bid price. A true and correct copy of the letter is attached hereto and incorporated herein as **Exhibit E**.

29. Additionally, as part of these discussions, Mr. Hayman approached Mr. Killeen and advised that the Borough may not have the money to pay for H&H's services as bid.

30. As a result of the Borough's apparent lack of money, Mr. Hayman made a specific request that H&H provide a lower price for its services for the Project.

31. In addition, Mr. Hayman asked Mr. Killeen if H&H would agree to continue to perform waste and collection services for the Borough for the remainder of 2023 at the same price (\$27,154.56 per month) as H&H's prior contract.

32. During these conversations, Mr. Hayman advised Mr. Killeen that the Borough would rebid the Project in 2024.

33. However, because the contract for the Project had been publicly bid, H&H declined Mr. Hayman's request to continue to perform under the terms of the prior contract on a month-to-month basis.

34. Moreover, H&H did not provide a lower price as Mr. Hayman requested because the request was inappropriate and undermined the public bid process.

35. On May 3, 2023, three weeks after the Borough had opened bids and only after H&H declined to perform waste services on a month-to-month basis at its prior pricing for the remainder of 2023, H&H received a letter from Remington & Vernick finding H&H's bid nonresponsive despite the prior communication that H&H was the lowest responsive and responsible bidder (the "Rejection Letter"). A true and correct copy of the Rejection Letter is attached hereto and incorporated herein as **Exhibit F**.

36. The Rejection Letter was sent to H&H over three weeks after it had submitted its bid, over two weeks after a draft contract was exchanged between H&H and the Borough, and was only sent after H&H denied Mr. Hayman's inappropriate requests to negotiate more favorable terms to the Borough after the bid process had concluded.

37. With respect to the Rejection Letter, Remington & Vernick contended that H&H's bid did not include required information on the basis that H&H listed its price for Bulk Trash Collection as \$0.00.

38. However, this rejection ignored that the information that H&H provided on April 12, 2023 made clear that the Bulk Waste pricing was included in H&H's bid and was included within its price for Solid Waste.

39. Notably, at no time prior to the Rejection Letter did the Borough request H&H to withdraw or modify its bid to correct any bid error relating to the Bulk Trash Collection.

40. Further, at no time prior to the Rejection Letter did the Borough state or imply H&H's bid failed to comply with the bid requirements; to the contrary, the Borough continued to exchange correspondence, including a draft contract with H&H under the premise that H&H had been awarded the contract for the Project.

41. It was only after H&H refused to either issue a lower price after the bid or agree to perform the contract at the prior price for the remainder of the calendar year 2023 that the Borough purported to raise a technical issue of responsiveness with H&H's bid.

42. The actions of the Borough and Remington & Vernick were purely reactionary and retaliatory to H&H's refusal to submit a lower price after the opening of the bids.

43. Moreover, unbeknownst to H&H, at the time that Mr. Hayman sent the Rejection Letter, the Borough had already awarded the contract for the Project to Opdenaker.

44. Specifically, H&H, through the undersigned counsel who are also counsel to Mr. Baroni, have learned that during a workshop meeting of the Borough's council, held on May 2, 2023, the Borough awarded the contract for the Project to Opdenaker in spite of the Borough's purported lack of funds even though Opdenaker's bid was nearly \$172,000 higher than H&H's bid.

45. Notably, Mr. Hayman made no mention in the Rejection Letter that the Borough had already made a contract award.

46. Additionally, as of May 10, 2023, the computer program used for bid submission, PennBid, indicated that the bid was still "pending award." A true and correct copy of the PennBid information is attached hereto and incorporated herein as **Exhibit G**.

47. It is believed that the Borough chose not to divulge that it had made an award to Opdenaker in the hope that its clear violations of Pennsylvania public bidding law would go unnoticed by H&H and the Borough's taxpayers.

48. Regardless, the Borough's purported reason for rejecting H&H's bid related to H&H's failure to identify costs for the bulk waste is not supported by any documents related to the bid process nor is it permissible under Pennsylvania law.

49. The requirements for bidders were set forth in the document from the Borough titled Information for Bidders. (Ex. B).

50. The Information for Bidders includes Sections 4.02 and 4.03 which detail what must be included in the bid and reasons for which a bid may be rejected. (Ex. B).

51. As set forth above, Section 4.02(A) states the following with respect to bidders what the bid price shall include:

The bid submitted must cover the entire cost of the contemplated solid waste and recycling collection in the

manner and detail described in the specifications. The price bid for each line item shall cover the entire cost of collection, including all materials, workmanship, and appurtenances necessary for its completion or as implied by description in the specifications, or to be reasonably inferred therefrom. The Not to Exceed cost shall include any costs incurred for disposal at a transfer station; these costs are to be included in the bid price submitted.

(Ex. B)

52. The Bid submitted by H&H clearly included all proposed pricing required. Specifically, the bid set forth that "Please be advised that **Bulk Waste Collection is included in the prices above.**" (Ex. E) (Emphasis in the original).

53. As a result, H&H's bid price reported \$0.00 for the Bulk Trash Collection sections of the bid form. (Ex. C).

54. The Borough argues that H&H's bid was not responsive because "HH Disposal did not provide the Bulk Trash Collection cost for Years 1-3 in the Base Bid nor the Bulk Trash Collection cost for Years 4-5 in the Alternate Bid as requested."

55. The Borough's justification for rejection is objectively false because H&H's bid advised the cost for bulk services were included in its bid.

56. Moreover, H&H's 2023 bid format comported with industry standard as evidenced by H&H's prior bids to the Borough which were accepted. A true and correct copy of H&H's prior bid for the Folcroft Waste Project is attached hereto and incorporated herein as Exhibit H.

57. Notably, the Borough completely ignored the bolded, highlighted, and underlined portion of H&H's bid which stated that Bulk Waste Collection was included in the pricing. (Ex. E).

58. Most importantly, *even if* H&H's statement in its bid on Bulk Services could be ignored by the Borough, and the prior history of bidding for Bulk Services in the Borough was of

no relevance, H&H did respond to the Bulk Collection by its statement and its submission of \$0.00 for the line item, the price submitted was simply \$0.00. (Ex. C).

59. Notably, no minimum pricing for any service was set forth. The Borough is effectively purporting to decline H&H's offer for not separately charging for a service H&H was still agreeing to perform.

60. The Borough's attempt to dismiss H&H's bid undermines Pennsylvania law governing competitive bidding and is a thinly veiled retaliation for H&H's refusal to accept the Borough's attempted changes to terms *after* the bid process had concluded.

61. The Borough's wrongful rejection of the lowest qualified, responsive, and responsible bid is nothing more than a thinly veiled retaliation for H&H's refusal to accept the Borough's attempt to modify the terms of the bid post-bid opening.

62. Because the Borough's competitive bid process was in violation of Pennsylvania public bidding law, Mr. Baroni now moves the Court for a Special Injunction pursuant to Pa. R. Civ. P. 1531.

#### **COUNT I — PRELIMINARY INJUNCTIVE RELIEF**

63. Mr. Baroni incorporates the preceding paragraphs by reference as if set forth more fully herein.

64. Pa. R. Civ. P. 1531(a) provides, in pertinent part, as follows:

[a] court shall issue a preliminary or special injunction only after written notice and hearing unless it appears to the satisfaction of the court that immediate and irreparable harm will be sustained before notice can be given or a hearing held, in which case the court may issue a preliminary or special injunction without a hearing or without notice.

65. Further, the Court may issue a preliminary or special injunction if the movant demonstrates that:

- (1) an injunction is necessary to prevent immediate and irreparable harm;
- (2) greater injury would result from refusing an injunction than from granting it;
- (3) an injunction would properly restore the parties to their status immediately prior to the alleged wrongful conduct;
- (4) the movant is likely to prevail on the merits of the action;
- (5) the requested injunction is reasonably suited to abate the offending activity; and
- (6) an injunction would not adversely affect the public interest.

*See Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1002 (Pa. 2003) (internal citations omitted).

66. A special injunction may be granted in the absence of a hearing upon the moving party's demonstration that "immediate and irreparable injury will be sustained before notice can be given or a hearing held." Pa. R. Civ. P. 1531(a); *Commonwealth ex rel. Costa v. Boley*, 272 A.2d 905, 909 (Pa. 1971).

67. In the present case, each of the above elements is met, and Mr. Baroni is entitled to injunctive relief.

68. First, if the Court does not grant an injunction, Mr. Baroni, as a taxpayer to the Borough will sustain immediate and irreparable harm.

69. The Borough's selection has confirmed in its May 15, 2023 email to counsel for Petitioner that a contract was awarded the Bid to the second bidder, Opdenaker, who was not the lowest responsible and responsive bidder.

70. The Borough has caused, and is causing, immediate and irreparable harm to its taxpayers by employing a bidding process that invites corruption by attempting a post-bid negotiation and retaliatory rejection when the low bidder failed to agree to such negotiation.

71. Further, if the Borough is permitted to proceed with Opdenaker performing work under the contract for the Project, no measure of relief from the Court will be able to undo these events.

72. Additionally, in Pennsylvania, violations of competitive bidding laws are sufficiently injurious to constitute irreparable harm. See *Shaeffer v. City of Lancaster*, 754 A.2d 719, 723 (Pa. Commw. Ct. 2000) (citing *Pennsylvania Public Utilities Comm'n v. Israel*, 52 A.2d 317 (Pa. 1947)).

73. An injunction is necessary to prevent immediate and irreparable harm to the Borough's taxpayers as a result of the Borough's actions in violating the procurement provisions of the Borough Code and the Pennsylvania Procurement Code. 8 Pa.C.S.A. § 1402, 62 Pa.C.S.A. § 3911.

74. Second, greater injury would result from refusing an injunction than granting it.

75. Granting a preliminary injunction would ensure that the integrity of the public bidding process is respected and followed and ensure that the laws of the Commonwealth of Pennsylvania are upheld and enforced.

76. Conversely, the Borough would not be harmed by a preliminary injunction.

77. This is especially true because H&H continues to perform the waste and recycling services to this day.

78. The Borough is not permitted to ignore the valid results of the public bidding process when there is a bidder who is clearly the lowest responsive and responsible bidder.

79. Specifically the Borough's attempt to circumvent the bid process in retaliation against H&H is not permissible under Pennsylvania law. "When the actual 'procedures followed emasculate the benefits of [competitive] bidding, judicial intervention is proper.'" *Allan Myers*,

*L.P. v. Department of Transportation*, 202 A.3d 205, 211 (Pa. Commw. Ct. 2019) (citing *Ezy Parks v. Larson*, 454 A.2d 928 (Pa. 1982)).

80. Nor would Opdenaker be harmed by an injunction because it is not entitled to a contract awarded in violation of Pennsylvania public bidding law.

81. Third, an injunction would return the parties' to their status immediately prior to the Borough's wrongful conduct in rejecting H&H's bid for no reason other than to retaliate for H&H's refusal to agree to terms more favorable to the Borough after the Borough had already opened the bids.

82. Fourth, and most significantly, Mr. Baroni is likely to prevail on the merits.

83. In that regard, the underlying purposes of competitive bidding include inviting "competition, to guard against favoritism, improvidence, extravagance, fraud and corruption in the award of municipal contracts." *Conduit & Foundation Corp. v. City of Philadelphia*, 401 A.2d 376, 380 (Pa. Commw. Ct. 1979).

84. Moreover, "[t]hose who bid for a public contract must be 'on an equal footing' and enjoy the same opportunity for open and fair competition . . . Where the bid process fails to place bidders on equal footing, the resulting contract will be declared void." *Hanisco v. Twp. of Warminster*, 41 A.3d 116, 123 (Pa. Commw. Ct. 2012) (internal citations omitted).

85. To that end, "private negotiations between the party awarding the contract and a successful bidder through which the terms and conditions of the competitive bids are modified or changed, are not in keeping with the purpose of competitive bidding." *Philadelphia Warehousing & Cold Storage v. Hollowell*, 490 A.2d 955, 957 (Pa. Commw. Ct. 1985).

86. Under Part II of the Pennsylvania Procurement Code, applicable to contracts awarded by a "government agency" included a political subdivision such as the Borough, it is



provided that “[i]n the case of a contract to be entered into by a government agency through competitive sealed bidding, the contract shall be awarded to the lowest responsible and responsive bidder within 60 days of bid opening, or all bids shall be rejected except as otherwise provided in this section.” 62 Pa.C.S.A. § 3911(a) (emphasis added).

87. This is consistent with the language of the Borough Code, which requires that contracts be awarded to the “lowest qualified and responsible bidder[.]” 8 Pa.C.S.A. § 1402(a). *See also Dragani v. Borough of Ambler*, 37 A.3d 27, 32 (Pa. Commw. Ct. 2012) (citing *Gaeta v. Ridley Sch. Dist.*, 788 A.2d 363 (Pa. 2002) and considering responsiveness of bid submitted under Borough Code).

88. Under Pennsylvania law, a “responsive bid” is “a bid which conforms in all material respects to the requirements and criteria in the invitation for bids.” *See generally* 62 Pa.C.S. § 103

89. A “responsive bid” is “a bid which conforms in all material respects to the requirements and criteria in the invitation for bids.” *See* 62 Pa.C.S. § 103.

90. By taking action in furtherance of a contract to a bidder that is not the lowest responsible and responsive bidder, the Borough will be proceeding in violation of the Pennsylvania Procurement Code, 62 Pa.C.S.A. § 3911(a), and the Borough Code, 8 Pa.C.S.A. § 1402(a), which require that contracts shall be awarded to the lowest qualified, responsive, and responsible bidder, or that all bids shall be rejected.

91. The Borough has not identified any legitimate reason for its decision to preclude H&H’s bid from being accepted as the lowest qualified, responsive, and responsible bid. Indeed, the Borough’s refusal to accept H&H’s bid fails to comport with the Bid Documents and is clearly a thinly veiled retaliatory measure against H&H.

92. Put another way, to punish H&H for its refusal to engage in a process that would have modified or changed the terms of its bid, which itself would violate competitive bidding principles, *see Philadelphia Warehousing*, 490 A.2d at 957, the Borough chose to cause the Borough's taxpayers to incur additional cost by awarding the contract for the Project to Opdenaker who was not the lowest qualified, responsive and responsible bidder.

93. The Borough's decision to wrongfully exclude H&H's bid solely as a result of H&H's refusal to engage in post-bid negotiations, serves to introduce corruption into the bid process and effectively allows the Borough to coerce bidders into violating Pennsylvania public bidding law under the threat of rejecting the lowest qualified, responsive, and responsible bid.

94. Such a scheme is antithetical to the purposes of public bidding and invites corruption in the award of public contracts, which is a clear violation of Pennsylvania law.

95. As such, because the Borough's attempt at renegotiating the low bidder's pricing post-bid and then retaliating when the low bidder fails to engage in such renegotiation violates the requirements for public bidding, Mr. Baroni is likely to prevail on the merits in this case.

96. Fifth, the requested special injunction is reasonably suited to abate the offending activity.

97. In particular, Mr. Baroni seeks a special injunction to prevent the Borough from moving forward with an award of the contracts for the Project or taking any other action in furtherance of the Project where the Borough has violated Pennsylvania law in coercing a low bidder to engage in further negotiations post-bid at the risk of not being awarded the contract.

98. Sixth, an injunction would not adversely affect the public interest.

99. Rather, an injunction will have a beneficial effect on the public interest by ensuring that the Borough's procurement process complies with Pennsylvania law and that the Borough's

taxpayers are not caused to incur extra expense due to the Borough's desire to retaliate against H&H.

100. Accordingly, Mr. Baroni meets all six factors for injunctive relief.

WHEREFORE, Plaintiff, James L. Baroni seeks an Order from this Court (1) enjoining the Borough of Folcroft from taking any action in furtherance of the contract award to Opdenaker for the Project; and (2) directing the Borough of Folcroft to (a) rescind the contract award to Opdenaker and (b) award the contract for the Project to H&H as the lowest qualified, responsive, and responsible bidder.

#### **COUNT II – DECLARATORY JUDGEMENT**

101. Mr. Baroni incorporates the preceding paragraphs by reference as if set forth more fully herein.

102. The Pennsylvania Declaratory Judgments Act, 42 Pa.C.S.A. §7351 et seq., provides in pertinent part:

Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.

103. For the reasons set forth above, the Borough's decision to award the contract for the Project to the second lowest bidder in a retaliatory effort against H&H for H&H's refusal to engage in post-bid negotiation, is a clear violation of the requirements for public bidding under Pennsylvania law.

104. The Borough abused its discretion in refusing to award the contract for the Project to H&H as the lowest responsive and responsible bidder, and engaging in conduct that violated Pennsylvania public bidding law.

WHEREFORE, Plaintiff, James L. Baroni seeks an Order from this Court (1) enjoining the Borough of Folcroft from taking any action in furtherance of the contract award to Opdenaker for the Project; and (2) directing the Borough of Folcroft to (a) rescind the contract award to Opdenaker and (b) award the contract for the Project to H&H as the lowest qualified, responsive, and responsible bidder.

Respectfully Submitted,

COHEN SEGLIAS PALLAS  
GREENHALL & FURMAN, P.C.

By: 

ROY S. COHEN  
MATTHEW L. ERLANGER  
NICHOLAS M. BENCSICS

MUSI, MERKINS, DAUBENBERGER  
& CLARK, LLP

By: 

THOMAS A. MUSI, JR.  
JAMES J. MERKINS, JR.

*Attorneys for Plaintiff, James L. Baroni*

Date: May 17, 2023

VERIFICATION

I, James L. Baroni, Plaintiff herein, state that the factual averments contained in the foregoing Complaint are true to the best of my knowledge, or information and belief. This Verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: 05/16/23

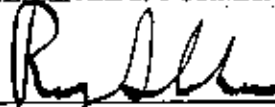
  
James L. Baroni

Copying Prohibited

**CERTIFICATE OF COMPLIANCE**

I, Roy S. Cohen, Esq. hereby certify that Plaintiff's Complaint complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

**COHEN SEGLIAS PALLAS  
GREENHALL & FURMAN, P.C.**

By: 

**ROY S. COHEN**

Date: May 17, 2023

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**EXHIBIT A**

## **NOTICE TO BIDDERS**

### **Folcroft Residential Solid Waste and Recycling Collection Contract Folcroft Borough**

The Folcroft Borough will utilize electronic bidding to receive sealed bids for the Folcroft Residential Solid Waste and Recycling Collection Contract. Sealed bids must be submitted online through the PennBid electronic procurement program prior to 04/12/2023 at 10:00 AM EST, at which time they will be opened and read aloud at the 555 Croton Rd, Suite 401 King of Prussia, PA, 19406.

All documents and solicitation details are available at no cost through PennBid ([www.PennBid.net](http://www.PennBid.net)).

Bidders are required to provide Bid Security in an amount equal to 10% of the total amount bid. Bid Security may be provided in the form of a certified check or a bid bond issued by a Surety Company licensed to transact such business in the Commonwealth of Pennsylvania.

Upon award of a contract, the Successful Bidder shall provide a Performance Bond and a Labor and Materials Payment Bond, each in the amount of 100% of the awarded contract value. Upon completion of the contract, the Successful Bidder shall provide a 2-year Maintenance Bond in the amount of 100% of the final contract value.

Bidders are required to comply with the Pennsylvania Prevailing Wage Act of 1961, P.L. 987, No. 442, where the project cost is \$25,000 or above for public work.

Only the Successful Bidder for a contract will be responsible for payment of a fee to PennBid and for bearing the cost thereof. The amount of the fee due to PennBid is either 1/3% (0.0033) of the initial contract award amount for fixed fee contracts or 1/6% (0.00166) of the expected contract value for term contracts and will be invoiced by PennBid to the successful bidder upon award of a contract by the Local Contracting Unit. The minimum fee is set at \$100.00 and the maximum fee is capped at \$5,000.00.

DCT: Mar. 15, 22. a-1



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**EXHIBIT B**

## INFORMATION FOR BIDDERS

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## **1.0 GENERAL.**

### **1.01 Project Information:**

- A. Project Title: Folcroft Residential Solid Waste and Recycling Collection Contract
- B. Project County: Delaware County
- C. Local Contracting Agency: Borough of Folcroft  
1555 Elmwood Ave  
Folcroft, PA 19032
- D. Design Professional: Remington & Vernick Engineers (RVE)  
555 Croton Rd, Suite 401  
King of Prussia, PA 19406

## **2.0 ELECTRONIC BIDDING INFORMATION.**

### **2.01 Electronic Bidding Statement.**

- A. In accordance with Title 62, Pennsylvania Code, Section 4603, local government units in the Commonwealth of Pennsylvania are allowed to utilize electronic bidding.
- B. The Local Contracting Agency is utilizing the PennBid electronic procurement program ("PennBid") to solicit bids for this project. Any alternate forms of bid submission will not be permitted for this project. Any bids received by means other than through PennBid will not be considered and will be returned to the bidder unopened.

### **2.02 Use of PennBid.**

- A. PennBid can be accessed by visiting the following website URL on the internet:  
<https://pennbid.procureware.com/>
- A. Interested bidders are required to register on PennBid. There is no cost associated with registering on PennBid. Once registered and logged into PennBid, bidders can select the "Bids" tab to view a complete listing of all currently available solicitations from every agency utilizing PennBid. Interested bidders can click the "View" button next to the listing for this project to access the project solicitation.
- B. PennBid is a sealed bidding system and has the electronic capability to maintain the confidentiality of the bid until the bid opening time.

- C. Only the successful bidder for a contract will be responsible for payment of a fee to PennBid and for bearing the cost thereof. The amount of the fee due to PennBid is either 1/3% (0.0033) of the initial contract award amount for fixed fee contracts or 1/6% (0.00166) of the expected contract value for term contracts and will be invoiced by PennBid to the successful bidder upon award of a contract by the Local Contracting Unit. The minimum fee is set at \$100.00 and the maximum fee is capped at \$5,000.00. For this project, the contract shall be a Term type contract.
- D. If a bidder remains logged into PennBid for 50 minutes, a logout warning will appear. If a logout warning appears, bidders must acknowledge it. If a bidder does not acknowledge the logout warning, they will be logged out of PennBid and the bidder's data will not be saved or submitted.

**2.03 Obtaining Bid Documents.**

- A. Bidders can access all bid documents during the bidding period by visiting the project solicitation on PennBid and then selecting the "Documents" tab within the project solicitation.
- B. All bid documents, including plans and specifications, can be downloaded from PennBid at no cost to the bidder. Once downloaded from PennBid, bidders may print any of the bid documents and may forward them to subcontractors or suppliers. Bidders are responsible for paying for any prints desired during the bidding period and for bearing the cost thereof.

**2.04 Questions During the Bidding Period.**

- A. All questions during the bidding period must be submitted through PennBid. Answers to any questions received during the bidding period will be distributed to all bidders through PennBid. Any questions received by means other than through PennBid will not be answered.
- B. Bidders can submit questions by visiting the project solicitation on PennBid and selecting the "Questions" tab from within the project solicitation. Questions may be submitted until the question cutoff time that is established on the "Questions" tab within the project solicitation.

**2.05 Submission of Bids.**

- A. Bidders must submit their bid by visiting the bid tab on PennBid and selecting the "Bid" tab from within the project solicitation. The bid tab contains the electronic bid form. All Bid Request for Information (Bid RFI) answer fields must be completed by the bidder. All "Unit Price" fields must be completed by the bidder. If the bidder desires to enter "no-bid" for a particular line item, they must enter a zero (0) in the corresponding "Unit Price" field. PennBid

will automatically complete the line extensions and bid totals. At the bottom of the page, the bidder must read the verification statement and then select the corresponding checkbox to acknowledge the same. The completed bid form can be printed and/or saved in Microsoft Excel format by the bidder by selecting the appropriate icons on the electronic bid form.

- B. An electronic copy of all required documents must be submitted to PennBid along with the bidder's electronic bid. Prior to submitting required documents to PennBid, the bidder must complete the documents, including any signatures and notarizations required. In order to submit an electronic copy of the required documents, the bidder must scan the completed documents and create either a single electronic file or a single zipped folder containing all required documents. Then the bidder must upload the file or zipped folder to PennBid by selecting the "Choose File" button on the electronic bid form, navigating and selecting the desired file or zipped folder and then clicking the "Open" button. The maximum size of an individual electronic file or zipped folder which can be uploaded to PennBid is 20 MB.
- C. After completing the electronic bid form and uploading all required documents to PennBid, the bidder must click the "Submit Bid" button at the bottom of the electronic bid form to submit their bid.
- D. Verifying Bid Submission. If the bid was submitted properly on PennBid, the bidder will receive an acknowledgement appearing in the middle of their screen stating "Your bid has been submitted".
- E. Bid Withdrawal Prior to Bid Opening Time. A bidder may withdraw their own bid at any time prior to the bid opening time. In order to withdraw their bid, the bidder must click the "Withdraw Bid" button at the bottom of the electronic bid form.

#### **2.06 PennBid Support.**

- A. There are several Help Guides and Frequently Asked Questions (FAQs) available on the PennBid website.
- B. If additional technical support is needed in relation to PennBid, bidders should call PennBid at (610) 693-4769.

### **3.0 BID PREPARATION:**

#### **3.01 Examination & Responsibility.**

- A. Bidders are directed to examine for themselves the drawings, specifications, estimated quantities and the location of the proposed work. They shall exercise their own judgment as to

the scope and nature of the work, the difficulties to be encountered and the quantities that may actually be required to complete the proposed work. Each bidder is fully responsible for having reviewed and understood these specifications prior to submitting their bid, and for ensuring that their bid covers and complies with all requirements of the Contract Documents and shall not at any time thereafter assert any claim related to a misunderstanding of the nature or amount of work to be done.

**3.02 Condition of Work.**

- A. Each bidder must inform themselves fully of the conditions relative to the contract under which the work is now being or will be performed. Failure to do so will not relieve a successful bidder of their obligation to furnish all materials and labor necessary to carry out the provisions of the contract documents and to complete the contemplated work for the contract as set forth in the bid. In carrying out their work, the Contractor must employ such means or methods that will not cause any interruptions or interference with the work of any other contractor (if applicable).

**3.03 Obligations of Bidders.**

- A. At the time of the opening of bids, each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the drawings and contract documents (including all addenda). The failure or omission of a bidder to receive or examine any form, instrument or documents shall in no way relieve the bidder from any obligations contained therein.

**3.04 Addenda, Bid Specification Challenges and Interpretations.**

- A. The Table of Contents for the technical specifications provides an index of each of the individual technical specification sections for this project and each of the individual technical specification sections include page numbering. If any bidder finds that any page is either illegible or is missing, they should immediately request the affected page(s) by submitting a question on PennBid, to include a listing of the missing page number(s). If the affected pages are determined to either be illegible or missing from the bid documents provided on PennBid, then the affected pages will be uploaded directly to PennBid and distributed to all bidders. Issuance of any such pages will not be considered an Addendum to the contract or specifications.
- B. Failure by a bidder to receive or acknowledge receipt of any notice, revision or addenda to the bid advertisement, specifications or bid documents, which have been duly issued and

distributed, shall not relieve the bidder from any obligations introduced by the provisions of the same and the bidder shall be bound by all such provisions by the submission of their bid.

- C. All notices, revisions or addenda shall be acknowledged by the bidder by completing the "Acknowledgement of Receipt of Changes to Bid Documents Form," which is provided in the Proposal Section of the bid documents. In lieu of listing addenda on the specified form, the bidder may acknowledge receipt of addenda by including a signed copy of the addenda with the bidder's electronic bid submitted to PennBid.
- D. Failure by a bidder to include the provisions of all answers, notices, revisions and addenda, including any changes, in their bid may result in rejection of the bid.
- E. All addenda which have been duly issued and distributed shall become part of the contract documents.
- F. Any bidder who wishes to challenge a bid specification shall file such challenges in writing by submitting a question on PennBid on or before the established question cutoff time. Challenges may not be filed after the question cutoff time and any challenges received by means other than through PennBid and/or after the question cutoff time will not be considered or answered and shall have no impact on the Local Contracting Unit or the award of a contract.
- G. No interpretations of the meaning of the drawings, specifications or other contract documents will be made to any bidder orally. Every request for such interpretations should be made by submitting a question on PennBid on or before the established question cutoff time. Any and all such interpretations and/or supplemental instructions will be issued in the form of an answer, notice, revision or addendum distributed to all bidders through PennBid, in accordance with State Laws.

### **3.05 Qualifications of Bidders.**

- A. The Local Contracting Unit may make such investigation as is necessary to determine the responsibility of the bidder and/or the ability of the bidder to perform the work. The bidder shall furnish the Local Contracting Unit all such information and data for this purpose, as the Local Contracting Unit may request. The Local Contracting Unit reserves the right to reject any bid if evidence submitted by, or investigation of such bidder fails to satisfy the Local Contracting Unit that said bidder is responsible or properly qualified to carry out the obligations of the contract and to complete the work therein contemplated.
- B. Conditional bids will not be accepted. Bids which are incomplete or obscure may be rejected at the option of the Local Contracting Unit.



### 3.06 Disclosure Statement.

- A. No corporation or partnership shall be awarded any contract nor shall any agreements be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with any public funds, by the State, County, Municipality or School District, or any subsidiary or agency of the State, County, Municipality or School District or by any Authority, Board or Commission which exercises governmental function, unless prior to the receipt of the bid of said corporation or said partnership, there is submitted a statement setting forth the names and addresses of all stockholders in the corporation or partnership who owns ten percent or more of its stock of any class or of all individual partners in the partnership who owns ten percent or greater interest therein, as the case may be. If one or more such stockholders or partners is itself a corporation's stock or the individual partners owning ten percent or greater interest in that partnership, as the case may be, shall also be listed. The disclosure shall be continued until the names and addresses of every non-corporate stockholder and the individual partner exceeding the ten percent ownership criteria established in this contract document has been listed. If the bidder is not a corporation or partnership, it must so indicate on the disclosure statement.

### 3.07 Manufactured Articles.

- A. In the specifications and on the accompanying drawings, there are specified and shown certain pieces of equipment and materials to be rented, purchased or delivered in place which have been deemed most suitable for the service anticipated and are hereby established as the Basis of Design for this project. In addition to the Basis of Design, other similar makes or brands listed in the specifications or on the accompanying drawings may be used in place of the Basis of Design make or brand. The make or brand of the specified equipment and materials are not intended to eliminate other equipment and materials made by equivalent makes or brands which are equally as good and efficient. However, unless an Equivalency Claim is allowed by the specifications or the project drawings and is accepted by the Local Contracting Unit, bidders shall utilize either the Basis of Design or one of the similar makes or brands listed in the specifications or on the accompanying drawings as the basis for the pricing submitted with their bid.
- B. Equivalency Claims will not be accepted unless specifically allowed by the specifications or on the project drawings for a specific piece of equipment or material. Subject to the requirements of the contract General Conditions, substitutions may be considered after the

award of a contract for the project. However, substitution requests that are anticipated by the bidder for pieces of equipment or materials may not form the basis of any pricing submitted with any bid.

- C. If the specifications or project drawings specifically allow an Equivalency Claim to be submitted for a specific piece of equipment or material, then any bidder desiring to submit an Equivalency Claim for that specific piece of equipment or material must follow the steps below:
- (1) Bidders must submit their Equivalency Claim to the Local Contracting Unit in the form of a question on PennBid no less than fourteen (14) days prior to the bid opening time. Along with the submission of any Equivalency Claim, bidders must provide all documentation and product information required by related specifications or on the project plans to establish the equivalency of the equipment or materials. If the Local Contracting Unit requests any additional information or data related to the consideration of an Equivalency Claim, then it shall be the responsibility of the bidder to deliver to the Local Contracting Unit all additional requested information or data within twenty-four (24) hours of such a request being made. Failure by a bidder to submit an Equivalency Claim within the time required or to deliver information and data to the Local Contracting Unit within the time required may result in non-consideration of such Equivalency Claim.
  - (2) The Local Contracting Unit, along with their Design Professional for the project, will review the information and data submitted by bidders and make a determination for or against acceptance of the bidder's Equivalency Claim. The results of any such determination will be considered final and will be distributed to all bidders no less than seven (7) days prior to the bid opening time in the form of an answer posted to PennBid or by an addendum duly issued and distributed.
    - (a) If the Local Contracting Unit accepts a bidder's Equivalency Claim, then any bidder may submit their bid based on the provisions of the accepted Equivalency Claim.
    - (b) In the event that the Local Contracting Unit denies a bidder's Equivalency Claim or does not make a determination for or against an Equivalency Claim prior to the bid opening time for any reason, then the bidder must submit their bid based on the Basis of Design or based on the similar makes or brands listed in the specifications or on the project plans.

**3.08 Bid Security & Consent of Surety.**

- A. Each bid shall be accompanied by bid security in the form of either a bid bond, in an amount equal to 10% of the total amount bid, or a Cashier's Check, in an amount equal to 10% of the total amount bid, duly executed by the bidder as principal made payable to the Local Contracting Unit. Bidders must submit their bid security to the Local Contracting Unit via PennBid prior to the bid opening time.
- (1) Any bid bond provided as bid security shall be issued by a Surety Company licensed to transact such business in the Commonwealth of Pennsylvania and shall be without endorsement or conditions. Bid bonds may be provided in the form of AIA Document A310 or an equivalent.
  - (2) Bidders must have an original copy of their bid security in their own possession prior to the advertised bid opening and must be able to deliver an original copy of their bid security to the Local Contracting Agency within three (3) business days of receipt of a written request from the Local Contracting Agency. Failure to deliver an original copy of bid security to the Local Contracting Agency within three (3) business days will result in rejection of the bid.
  - (3) Such bid security will be returned to all bidders, with the exception of the three (3) apparent lowest responsible bidders, within fifteen (15) days after the bid opening time. Bid security will be returned to the remaining unsuccessful bidders within five (5) days after the Local Contracting Unit has accepted a satisfactory performance bond from the successful bidder. If no contract is awarded within sixty (60) days after the bid opening time, bid security will be returned to any bidder upon demand made after said sixty (60) day period, so long as the bidder has not been notified by the Local Contracting Agency of the acceptance of their bid.
  - (4) Subject to the provisions of the Public Contract Bid Withdrawal Law, Title 72, Pennsylvania Code, Section 1601, any bid security shall be forfeited by the bidder and shall become the possession of the Local Contracting Unit if the bidder whose bid is accepted should default on any one of the following requirements: (1) to accept a contract, (2) to execute a contract within ten (10) days after receiving notice from the Local Contracting Unit to do so, (3) to provide a satisfactory performance bond and labor and material payment bond, or any combination thereof. Any payment made to the Local Contracting Unit by reason of default shall not be construed as a penalty, but as liquidated damages for breach of contract.

- B. Each bid shall be accompanied by a certificate letter from a Surety Company licensed to transact such business in the Commonwealth of Pennsylvania certifying that it will provide the bidder with the required performance bond and labor and material payment bond upon contract award to the bidder (i.e. Consent of Surety).

#### 4.0 SUBMISSION OF BIDS.

##### 4.01 General.

- A. The Local Contracting Unit is utilizing the PennBid electronic procurement program ("PennBid") to solicit bids for this project. Any alternate forms of bid submission will not be permitted for this project. Any bids received by means other than through PennBid will not be considered and will be returned to the bidder unopened.
- B. Any bid may be submitted or withdrawn prior to the bid opening time, or authorized postponement thereof.
- C. Bids will not be accepted or opened if submitted after the bid opening time that is indicated in the advertised Notice to Bidders, or authorized postponement thereof.
- D. Subject to the provisions of the Public Contract Bid Withdrawal Law, Title 72, Pennsylvania Code, Section 1601, once the actual bid opening takes place, no bid may be withdrawn for a period of sixty (60) days.
- E. Bidders should refer to the "Electronic Bidding Information" section of the Information for Bidders for more information.

##### 4.02 Price to Include.

- A. The bid submitted must cover the entire cost of the contemplated solid waste and recycling collection in the manner and detail described in the specifications. The price bid for each line item shall cover the entire cost of collection, including all materials, workmanship, and appurtenances necessary for its completion or as implied by description in the specifications, or to be reasonably inferred therefrom. The Not to Exceed cost shall include any costs incurred for disposal at a transfer station; these costs are to be included in the bid price submitted.
- B. If there are minimum unit prices included in the bid form, those unit prices shall be the minimum acceptable unit prices for the work. If the bidder fails to propose a unit cost in their bid that is equal to or greater than the minimum unit price indicated on the bid form, then the unit price for the affected line item will be set to equal the minimum unit price indicated on the

bid form and the bidder's total bid amount will be adjusted by extension of the minimum unit price.

4.03 Rejection of Bids.

- A. The Local Contracting Unit reserves the right to reject all bids, to reject any bid or bids not complying with the specifications, and to waive any informality in any bid or bids if such waiver be deemed by the Local Contracting Unit to be in the best interest of the Local Contracting Unit.
- B. Each bidder is instructed to be present in person or by representative at the time and place fixed for the opening of bids and at every subsequent meeting of the Local Contracting Unit at which the bidder is advised, or it has been publicly announced at the time of bids, that said bids shall receive further consideration or shall be acted upon, if said bidder desires an opportunity to be heard.
- C. Any of following reasons, either considered independently or in combination with factors, may be considered, in the judgment of the Local Contracting Unit sufficient reasons for bidder disqualification and rejection of the bid(s):
  - (1) Submittal of more than one bid for the same work from an individual, a firm, a partnership, an association, a subsidiary, an affiliate, or a corporation under the same or different name.
  - (2) Evidence of collusion among bidders. Any participation in such collusion will receive no recognition as a bidder for future work from the Local Contracting Unit until the participant has been reinstated as a qualified bidder.
  - (3) Lack of competency, adequate machinery, plant, or of other equipment.
  - (4) Inability, in the judgment of the Local Contracting Unit to promptly complete the project, because of uncompleted work.
  - (5) Failure to pay, or satisfactorily settle, all bills due for material furnished, for labor supplied or performed, for rental of equipment used, and for services rendered by public utilities.
  - (6) Failure to comply with any prequalification requirements which may be established by the Local Contracting Unit.
  - (7) Contractor currently debarred by Federal or State Authority.

- (8) Material or intentional failure to comply with contract, drawings, or specifications, or material or intentional failure to adequately maintain and control traffic during construction on a previous contract.
- (9) Failure to properly sign the bid, the required affidavits, or certificate, or any other required documents, said documents being listed in the Proposal Section.
- (10) Failure to include a price for each item on the pricing response form, except in the case of alternate bidding; in alternate bidding, failure to include a price for one of the required alternate bid items on the pricing response form.
- (11) The inclusion of conditions or qualifications not provided for in the proposal.
- (12) The bid contains omission(s) or alteration(s), addition(s) not specified, or deviation(s) of any other kind.
- (13) The bid is materially unbalanced. A bid is materially unbalanced when, despite an acceptable total bid price, the price of one or more line items is significantly overstated or understated. A bid may be rejected if the lack of balance poses an unacceptable risk.
- (14) Failure by the bidder to satisfy any of the other requirements included with the contract, specifications or plans, including, but not limited to, those requirements listed within the Proposal Section and Information for Bidders section.

#### 4.04 Award of Bid.

- A. The award of the contract will be made, subject to necessary monies to do the work being provided by the Local Contracting Unit either by resolution or ordinance or another lawful manner. The contract to be executed by the successful bidder will provide that it shall not become effective until the necessary monies to do the work have been provided by the Local Contracting Unit, either by resolution or ordinance or another lawful manner.

### 5.0 CONTRACTS.

#### 5.01 Specifications to be Furnished.

- A. The Local Contracting Unit shall furnish, at no additional cost to the successful bidder, one (1) executed set of the contract documents and two (2) additional copies of the specifications. All additional copies of the project specifications shall be furnished by the contractor and they shall bear the reproduction and handling costs thereof.

**5.02 Performance, Payment and Maintenance Bonds.**

- A. The bidder who's bid is accepted shall furnish to the Local Contracting Unit the required performance bond and labor and material payment bond, each in the amount of one hundred percent (100%) of the annual awarded contract price bid for completed work, by a surety company licensed to transact such business in the Commonwealth of Pennsylvania which will govern the first year of the contract and shall be renewed each year thereafter and as described below. The performance bond and labor and material payment bonds may be provided in the form of AIA Document A312 or an equivalent.
- B. All surety companies must designate a Pennsylvania agent on whom service of process can be made. The contractor shall be responsible for updating the surety's expiration from the list or an agent change to the Local Contracting Unit. All surety companies must have the minimum capital and surplus or net cash assets required on the date of the bid advertisement for the project. All surety companies must complete a Surety Disclosure Statement and Certification for all performance bonds and labor and material payment bonds.
- C. In addition, for public works projects, including any and all alternates, that equals at least \$850,000.00 but not more than \$3.5 million, the surety company must hold current certificates of authority issued by the U.S. Secretary of the Treasury that is valid in the Commonwealth of Pennsylvania, as listed annually in the U.S. Treasury Circular 570. However, if the surety company has been operational for a period in excess of five (5) years, the surety company shall also be considered to have satisfied this requirement if it is rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies.
- D. In addition, for public works projects, including any and all alternates, that is in excess of \$3.5 million, the surety company must hold a current certificate of authority issued by the U.S. Secretary of the Treasury that is valid in the Commonwealth of Pennsylvania, as listed annually in the U.S. Treasury Circular 570. And, if the surety company has been in operation for a period in excess of five (5) years, it must be rated in one of the three highest categories by an independent, nationally recognized United States rating company that determined the financial stability of insurance companies.
- E. A surety company which seeks to provide a performance bond and labor and material bond in excess of \$3.5 million is exempt from the requirement of being listed in the U.S. Treasury Circular 570 if it meets the standards developed by the Commissioner of Insurance through regulations which either equal or exceed the general criteria required for Treasury listing.

5.03 Laws and Regulations.

- A. The bidder's attention is directed to the fact that all applicable Federal, State, County and municipal laws, ordinances, regulations, etc. and the rules and regulations of all authorities having jurisdiction over the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though therein written out in full including, but not limited to the current editions of the following: PennDOT Publication 408, Federal Construction Safety Act (Public Law 91-54), Federal Register, Chapter VXXII, Part 1926 of Title 29, Code of Federal Regulations, Occupational Safety and Health Regulations for Construction.

5.04 Permits.

- A. The contractor shall determine which permits and licenses shall be needed, and shall prepare applications for all such permits, as necessary for the execution of their work.
- B. Unless explicitly stated otherwise in the contract documents, the contractor shall be responsible for paying any necessary permitting fees and for bearing the costs thereof.

5.05 Contract Documents.

- A. Included with this Information for Bidders section is the "Form of Contract" which shall be the general form of the contract which is executed between the Local Contracting Unit and the contractor.
- B. The contractor shall execute and return all contract documents, along with the required bonds, insurance certificates, and any other documents required within ten (10) days after the receipt of a written request for execution.

5.06 Notice to Proceed

- A. Only after the approval and execution of the contract documents by all parties, the Local Contracting Unit, or their authorized representative, may issue a written Notice to Proceed to the contractor which will serve as formal authorization to proceed with the project work.
- (1) The Local Contracting Unit may delay issuance of a Notice to Proceed to the contractor until a pre-construction meeting has taken place and/or until product submittals have been approved by the Local Contracting Unit, or their authorized representative.



- (2) If necessary, the Local Contracting Unit may issue a Limited Notice to Proceed which will serve as formal authorization to proceed with a limited portion of the project work, said portion to be identified therein.

## 6.0 NONDISCRIMINATION REQUIREMENTS

### 6.01 Nondiscrimination Clause

- A. Bidders are required to comply with the requirements of Title 16, Pennsylvania Code, Section 49.101, which includes the following nondiscrimination clause:

- (3) Contractor shall not discriminate against any employee, applicant for employment, independent contractor, or any other person because of race, color, religious creed, ancestry, national origin, age, or sex. Contractor shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
- (4) Contractor shall in advertisements or requests for employment placed by it or on its behalf state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex.
- (5) Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.
- (6) It shall be no defense to a finding of a noncompliance with Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this nondiscrimination clause that Contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor

was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

- (7) Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this nondiscrimination clause, Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.
- (8) Contractor shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, 16 Pa. Code Chapter 49 and with all laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the nondiscrimination clause of this contract or with any such laws, this contract may, after hearing and adjudication, be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Commonwealth contracts, and such other sanctions may be imposed and remedies invoked as provided by the Contract Compliance Regulations.
- (9) Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the contracting agency and the Human Relations Commission, for purposes of investigation to ascertain compliance with the provisions of the Contract Compliance Regulations, pursuant to § 49.35 (relating to information concerning compliance by contractors). If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Commission.
- (10) Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees.
- (11) Contractor shall include the provisions of this nondiscrimination clause in every subcontract, so that such provisions will be binding upon each Subcontractor.
- (12) The terms used in this nondiscrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, 16 Pa. Code Chapter 49.
- (13) Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania, or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

- B. As required by the nondiscrimination clause above, the contractor shall post a notice in conspicuous places, available to employees, agents, applicants for employment and other persons, setting forth the provisions of the nondiscrimination clause. Furthermore, the contractor shall send each labor union or workers' representative, in which it has a collective bargaining agreement or other contract or understanding, a copy of said notice. The notice shall take the form of the Notice of Nondiscrimination Clause which is included in this Information for Bidders.

Copying Prohibited

**EQUAL EMPLOYMENT OPPORTUNITIES IN CONTRACTS**

**FOR THE COMMONWEALTH OF PENNSYLVANIA**

**NOTICE OF NONDISCRIMINATION CLAUSE**

Notice to: Contractor(s), Sub-Contractor(s), Supplier(s), Vendor(s), and Labor Organization(s).

To: \_\_\_\_\_

You are hereby given notice that the undersigned holds a contract in the Commonwealth of Pennsylvania and has agreed under the Nondiscrimination Clause of such contract to the terms set forth in Title 16, Pennsylvania Code, Section 49.101(d), setting forth clauses (1) through (11).

The contract held by the undersigned is for the Folcroft Residential Solid Waste and Recycling Collection Contract and is with the Borough of Folcroft, a contracting agency of the Commonwealth.

Pursuant to clause (1) of such Nondiscrimination Clauses, the subject matter of the contractor's undertakings to insure equal employment opportunities to applicant for employment without discrimination because of religious creed, race, color, sex, age, ancestry or national origin, includes, but is not limited to:

"Recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation and selection for training or retaining, including apprenticeship and on-the-job training."

\_\_\_\_\_  
Name of Contractor

By Authorized Representative of Contractor:

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name and Title

Certified Mail No. \_\_\_\_\_

6.02 Contract Procedures.

- A. The successful bidder must sign a contract containing the mandatory language in Section 4.01(9) of the Information for Bidders, above. If a contractor refuses to sign a contract containing the mandatory Nondiscrimination Clause, at the time the Local Contracting Unit provides the contract to the contractor for execution, then the Local Contracting Unit will reject the contractor's bid as non-responsive. When such rejection occurs, the same nondiscrimination requirements shall apply to any other contractor selected by the Local Contracting Unit, in accordance with the contracting laws and procedures.

6.03 Equal Opportunity for Individuals with Disabilities.

- A. The contractor and the Local Contracting Unit do hereby agree that the provisions of Title II of the Americans with Disabilities Act (the "Act") (42 U.S.C. § 12,101 et seq.), which prohibits discrimination on the basis of disability by public entities, in all services, programs and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereto, are made part of this contract. In providing any aid, benefit or service on behalf of the Local Contracting Unit pursuant to this contract, the contractor agrees that the performance shall be in strict conformance with the Act.
- B. In the event that the contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the contractor shall defend the Local Contracting Unit in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the Local Contracting Unit, its agents, servants and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs or other expenses arising from such action or administrative proceeding or incurred in connection therewith.
- C. In any and all complaints brought pursuant to the Local Contracting Unit's grievance procedure, the contractor agree to abide by any decision of the Local Contracting Unit, which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the Local Contracting Unit, or if the Local Contracting Unit incurs any expense to cure a violation of the Act which has been brought pursuant to its grievance procedure, the contractor shall satisfy and discharge the same at its own expense.

- D. The Local Contracting Unit shall, as soon as practical after a claim has been made against it, give written notice thereof to the contractor along with the full particulars of the claim. If any action or administrative proceeding is brought against the Local Contracting Unit or any of its agents, servants and employees, the Local Contracting Unit shall expeditiously forward or have forwarded to the contractor every demand, complaint, notice, summons, pleading, or other process received by the Local Contracting Unit or its representatives.
- E. It is expressly agreed and understood that any approval by the Local Contracting Unit of the services provided by the contractor pursuant to this contract will not relieve the contractor of the obligation to comply with the Act and to defend, indemnify, protect and save harmless the Local Contracting Unit, pursuant to this paragraph. It is further agreed and understood that the Local Contracting Unit assumes no obligation to indemnify or save harmless the contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this contract.
- F. Furthermore, the contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the contractor's obligations assumed in this contract, not shall they be construed to relieve the contractor from any liability nor preclude the Local Contracting Unit from taking any other actions available to it under any other provisions of this contract or otherwise at law.

|                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>PROJECT: &lt;&lt;PROJECT TITLE&gt;&gt;</p> <p>OWNER: &lt;&lt;OWNER&gt;&gt;</p> <p>CONTRACTOR: &lt;&lt;CONTRACTOR&gt;&gt;</p> <p>&lt;&lt;STREET ADDRESS&gt;&gt;</p> <p>&lt;&lt;CITY, STATE, ZIP&gt;&gt;</p>                                                                                                                                                      |                                                                                                                                                                       |
| <p>THIS AGREEMENT, between the OWNER (as named above), a municipal corporation of the Commonwealth of Pennsylvania, and CONTRACTOR (as named above):</p>                                                                                                                                                                                                           |                                                                                                                                                                       |
| <p>WITNESSETH:</p>                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                       |
| <p>That for and in consideration of the sum of &lt;&lt;DOLLARS&gt;&gt;, as per the attached Contract Summary, CONTRACTOR agrees to furnish to the OWNER, the labor, material, equipment and services for the PROJECT, in accordance with the Contract Documents hereinafter set forth.</p>                                                                         |                                                                                                                                                                       |
| <p>That for and in consideration of the amount payable under this agreement by the OWNER, the CONTRACTOR agrees, at its own pro per cost and expense, and with due skill and diligence, that it will complete the PROJECT, in accordance with the Contract Documents and in compliance with this agreement.</p>                                                    |                                                                                                                                                                       |
| <p>CONTRACTOR agrees to receive as compensation for services provided an amount not to exceed the Contract Value, namely &lt;&lt;DOLLARS&gt;&gt;, in accordance with the quantity and payment sections listed in the technical specifications. CONTRACTOR shall be responsible for all loss or damage arising out of the furnishing of the services aforesaid.</p> |                                                                                                                                                                       |
| <p>To provide all disputes and litigation, it is agreed by and between the parties to the Contract that the OWNER shall in all cases determine the quantity of the goods delivered and paid for under this contract, and as to the interpretation of any ambiguity in or inhere of the drawings and specifications.</p>                                            |                                                                                                                                                                       |
| <p>This Contract Documents shall consist of the following:</p>                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                       |
| <p>Notice to Bidders</p> <p>Published Instructions to Bidders</p> <p>Proposal Section</p> <p>Information for Bidders</p> <p>Prevailing Wage Rates (when applicable)</p> <p>All Addenda</p>                                                                                                                                                                         | <p>Contract</p> <p>General Conditions</p> <p>Technical Specifications</p> <p>Contract Drawings</p>                                                                    |
| <p>The parties to this Contract agree to incorporate into this Contract the mandatory requirements of Title 16, Pennsylvania Code, Section 93.101, as amended and supplemented from time to time and the CONTRACTOR agrees to comply fully with the terms, provisions, and obligations of said requirements.</p>                                                   |                                                                                                                                                                       |
| <p>This agreement, together with the Contract Documents, form the Contract and they are as fully a part of this Contract as if here attached or herein repeated.</p>                                                                                                                                                                                               |                                                                                                                                                                       |
| <p>The OWNER and the CONTRACTOR, for themselves, their heirs, executors, administrators, successors or assigns, hereby agree to the full performance of the covenants herein contained.</p>                                                                                                                                                                        |                                                                                                                                                                       |
| <p>The following information represents the bid information as submitted online by the CONTRACTOR via the PennBid system and subsequently accepted by the OWNER.</p>                                                                                                                                                                                               |                                                                                                                                                                       |
| <p>Proposal submitted on: &lt;&lt;MM/DD/YYYY&gt;&gt; at &lt;&lt;HH:MM AM/PM&gt;&gt;</p> <p>By CONTRACTOR: &lt;&lt;CONTRACTOR&gt;&gt;</p> <p>Total Awarded Amount: &lt;&lt;DOLLARS&gt;&gt;</p> <p>Representing: &lt;&lt;Base Bid, Alternate No. 1, Alternate No. 2&gt;&gt;</p>                                                                                      | <p>Schedule of Liquidated Damages:</p> <p>1-15 Days: \$500 per calendar day</p> <p>16-30 Days: \$1,000 per calendar day</p> <p>31+ Days: \$2,000 per calendar day</p> |

### Contract Summary

#### Base Bid

| Item | Quantity | Units | Description | Unit Price | Amount |
|------|----------|-------|-------------|------------|--------|
| 1    | 0        | LS    | description | \$0.00     | \$0.00 |
| 2    | 0        | LS    | description | \$0.00     | \$0.00 |
| 3    | 0        | LS    | description | \$0.00     | \$0.00 |
| 4    | 0        | LS    | description | \$0.00     | \$0.00 |
| 5    | 0        | LS    | description | \$0.00     | \$0.00 |
| 6    | 0        | LS    | description | \$0.00     | \$0.00 |
| 7    | 0        | LS    | description | \$0.00     | \$0.00 |
| 8    | 0        | LS    | description | \$0.00     | \$0.00 |
| 9    | 0        | LS    | description | \$0.00     | \$0.00 |
| 10   | 0        | LS    | description | \$0.00     | \$0.00 |

Total Amount Base Bid

\$0.00

#### Alternate Bid No. 1

| Item | Quantity | Units | Description | Unit Price | Amount |
|------|----------|-------|-------------|------------|--------|
| 101  | 0        | LS    | description | \$0.00     | \$0.00 |
| 102  | 0        | LS    | description | \$0.00     | \$0.00 |
| 103  | 0        | LS    | description | \$0.00     | \$0.00 |
| 104  | 0        | LS    | description | \$0.00     | \$0.00 |
| 105  | 0        | LS    | description | \$0.00     | \$0.00 |
| 106  | 0        | LS    | description | \$0.00     | \$0.00 |
| 107  | 0        | LS    | description | \$0.00     | \$0.00 |
| 108  | 0        | LS    | description | \$0.00     | \$0.00 |
| 109  | 0        | LS    | description | \$0.00     | \$0.00 |
| 110  | 0        | LS    | description | \$0.00     | \$0.00 |

Total Amount Alternate Bid No. 1

\$0.00

Total Amount Bid Based on Estimated Quantities

\$0.00

### Questions and Answers submitted with Bid via PennBid

- (1) I am authorized by my organization to submit bids on PennBid and am submitting this bid with the full knowledge and consent of my organization's management. (Enter YES or NO) \_\_\_\_\_
- (2) I certify that none of the principals of the Bidder are also employees of the Owner. (Enter YES or NO) \_\_\_\_\_
- (3) I (the Bidder) agree to enter into an Agreement with the Owner based upon the terms and conditions of the bidding documents for the prices entered in my bid submission. (Enter YES or NO) \_\_\_\_\_
- (4) I (the Bidder) am capable of substantially completing this project within <<##>> calendar days of the Notice to Proceed. I accept that failure to complete this project within the allotted time will result in the assessment of liquidated damages. (Enter YES or NO) \_\_\_\_\_
- (5) I (the Bidder) understand my bid will remain subject to acceptance for a period of 60 days after the bid opening, or for a longer period subject to written agreement between the Bidder and Owner. (Enter YES or NO) \_\_\_\_\_
- (6) I (the Bidder) accept, with the submission of this bid, that I have carefully studied the bid documents, questions answered by the Engineer, and all posted Addenda. (Enter YES or NO) \_\_\_\_\_
- (7) I (the Bidder) acknowledge visiting the project site and understand the general, local, and site conditions that may affect cost, progress, and performance of the work specified in the bid documents. (Enter YES or NO) \_\_\_\_\_



- 1 (The Bidder) am familiar with and am satisfied with any and all laws and regulations that may affect cost, progress, and performance of the work specified within the bid documents. (Enter YES or NO)
- 2 (The Bidder) am aware of the general nature of work to be performed by others that relates to the work described in the bid documents. (Enter YES or NO)
- 3 (The Bidder) have given the Engineer written notice of all conflicts, errors, ambiguities, or discrepancies discovered in the bid documents and have received acceptable written resolution from the Engineer. (Enter YES or NO)
- 4 (The Bidder) have completed and uploaded the Proposal section from the Bid Submission Documents folder. I have uploaded a Bid Bond. (Enter YES or NO)
- 5 (The Bidder) acknowledge that my organization and our subcontractors comply in all respect with the Public Works Employment Act 43 P.S. 167.1 - 167.11 (Act), including completing the electronic verification program (EVP). (Enter YES or NO)
- 6 (The Bidder) acknowledge that payment for any Lump Sum (LS) type line items will be made based on the percent completion of said line items, as determined by the Engineer, unless specifically stated otherwise in the contract. Furthermore, I acknowledge that the dimensions and quantities of work indicated on the project plans and specifications shall be made for minor deviations from the dimensions and quantities of work indicated on the project plans and specifications for Lump Sum (LS) type line items. In general, deviations are considered minor if they are within 10% of the planned work dimensions and quantities. (Enter YES or NO)
- 7 (The Bidder) acknowledge that payment for any unit price type line item, except for Lump Sum (LS) type line items, will be made based on the actual measured quantity of work completed, as determined by the Engineer. Furthermore, I acknowledge that if the measured quantity is less than the contract quantity, there will be no claim for damages related to the loss of any anticipated profits from the quantity that is not completed. (Enter YES or NO)

**Contractor's Certification**

It is hereby certified as follows:

(1) All interested principal(s) to this Contract are accurately identified in the bid submitted by the CONTRACTOR, except that any interested principal(s) not identified in the bid submitted by the CONTRACTOR are hereby identified as follows: \_\_\_\_\_

(2) The information described within this Contract accurately reflects the bid submitted by the CONTRACTOR.

(3) The CONTRACTOR agrees to be bound by the terms and conditions of this Contract.

**CONTRACTOR:**

Signature \_\_\_\_\_

Print Name and Title \_\_\_\_\_

Witnessed \_\_\_\_\_

Seal \_\_\_\_\_

**<<CONTRACTOR>>**

**OWNER:**

Signature \_\_\_\_\_

Print Name and Title \_\_\_\_\_

Witnessed \_\_\_\_\_

Seal \_\_\_\_\_

**<<OWNER>>**

Signature \_\_\_\_\_

Print Name and Title \_\_\_\_\_

Witnessed \_\_\_\_\_

Seal \_\_\_\_\_

Date of Acceptance: \_\_\_\_\_

## **8.0 CERTIFICATE OF INSURANCE.**

### **8.01 Insurance Requirements.**

A. The contractor is required to provide a certificate of insurance for the coverage and amounts indicated on the sample certificate of liability insurance certificate provided herein. It is important that a certificate of insurance be provided in a timely manner to facilitate execution of contract documents within the time requirements required elsewhere in the Information for Bidders. Additionally, the minimum amount and type of coverage shown on the sample certificate of liability insurance certificate is not negotiable and is not intended to imply that is all the insurance necessary to protect him/her from all losses or liability. It is the Local Contracting Unit's policy to require all suppliers who make deliveries or perform assembly, repair operations or a service in on or upon our property/premises or property/premises under our care, custody and control to maintain the insurance coverage described below, such insurance must be obtained prior to the start of any such work for the Local Contracting Unit.

(1) **Comprehensive General Liability.** This coverage must include: Premises-operations, products/completed operations hazard, contractual insurance (blanket coverage), broad form property damage, independent contractors, and personal injury and all other shown on the sample certificate of liability insurance. The minimum coverage amount for bodily injury and property damage combined shall be as shown on the sample certificate of liability insurance.

(a) **Contractual Insurance (blanket coverage)** shall provide contractual indemnification, including a save harmless agreement which is to be incorporated into all Vouchers, General Purchase Agreements and Contracts.

(b) **Indemnification.** Supplier shall defend, indemnify and save harmless, the Local Contracting Unit from and against all losses, costs, damages, expense claims or demands arising out of or caused or alleged to have been caused in any manner by a defect in any equipment or materials supplied hereunder or by doing the work herein provided, including all suits or actions of every kind of description brought against the Local Contracting Unit, either individually or jointly with Supplier for or on account of any damage or injury to any person or property, caused or occasioned or alleged to have been caused by or on account of the performance of any work pursuant to or in connection with this contract or through any negligence or alleged negligence in guarding the work or through any act, omission or fault or alleged act, omission or fault of the Supplier, its employees or agents, or others under the Supplier's control.

- (2) Automobile Liability. Comprehensive form as shown on the sample certificate of liability insurance certificate.
- (3) Workers Compensation. As required by Pennsylvania State Statute and minimum \$1,000,000.00.
- (4) Excess Liability. Commercial umbrella form - \$10,000,000.00.
- (5) Pollution Liability. Coverage in the amount of \$1,000,000.00 per occurrence or aggregate including transportation risks.
- (6) Other Coverage(s). As shown on the sample certificate of liability insurance certificate.

8.02 Sample Certificate of Liability Insurance Certificate.

| ACORD <sup>®</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                   | CERTIFICATE OF LIABILITY INSURANCE                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                  | DATE (MM/DD/YYYY)           |                             |                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.</p> <p>IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).</p> |                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                  |                             |                             |                                                                                                                                                                                                                                                                                                                                      |
| <p>PRODUCER</p> <p style="font-size: 2em; text-align: center;">SAMPLE</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                   | <p>CONTACT NAME: _____</p> <p>PHONE: _____ FAX: _____</p> <p>MAILING ADDR: _____</p> <p>E-MAIL ADDRESS: _____</p> <p>INSURER(S) AFFORDING COVERAGE: _____</p> <p>INSURER A: _____</p> <p>INSURER B: _____</p> <p>INSURER C: _____</p> <p>INSURER D: _____</p> <p>INSURER E: _____</p> <p>INSURER F: _____</p> |                                                                                                                                                                                                                                                                  |                             |                             |                                                                                                                                                                                                                                                                                                                                      |
| <p>INSURED</p> <p style="font-size: 2em; text-align: center;">SAMPLE</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                  |                             |                             |                                                                                                                                                                                                                                                                                                                                      |
| COVERAGES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                   | CERTIFICATE NUMBER:                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                  | REVISION NUMBER:            |                             |                                                                                                                                                                                                                                                                                                                                      |
| <p>THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</p>                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                  |                             |                             |                                                                                                                                                                                                                                                                                                                                      |
| UNIT NO.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | TYPE OF INSURANCE                                                                                                                                                                                                                                                                                                                                 | ADDITIONAL (SEE 1.10.2)                                                                                                                                                                                                                                                                                       | POLICY NUMBER                                                                                                                                                                                                                                                    | POLICY EFF. DATE (MM/DD/YY) | POLICY EXP. DATE (MM/DD/YY) | LIMITS                                                                                                                                                                                                                                                                                                                               |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <p>GENERAL LIABILITY</p> <p><input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY</p> <p><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR</p> <p>GEN'L AGGREGATE LIMIT APPLIES PER:</p> <p>POLICY <input checked="" type="checkbox"/> PRO. <input type="checkbox"/> UCC <input type="checkbox"/> LOC</p> | X                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                  |                             |                             | <p>EACH OCCURRENCE \$ 1,000,000</p> <p>CLAIMS-MADE \$ 100,000</p> <p>PROD. EXP. (per occurrence) \$ 10,000</p> <p>PROD. EXP. (any one person) \$ 1,000,000</p> <p>PERSONAL &amp; ADN INJURY \$ 1,000,000</p> <p>SEVERAL AGGREGATE \$ 2,000,000</p> <p>PRODUCTS - COMPLETED \$ 2,000,000</p> <p>PRODUCTS - COMPLETED \$ 1,000,000</p> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <p>AUTOMOBILE LIABILITY</p> <p><input checked="" type="checkbox"/> ANY AUTO</p> <p><input type="checkbox"/> ALL COM. AUTOS</p> <p><input checked="" type="checkbox"/> Hired AUTOS</p> <p><input type="checkbox"/> SCHEDULED AUTOS</p> <p><input checked="" type="checkbox"/> NON-OWNED AUTOS</p>                                                  | X                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                  |                             |                             | <p>COMBINED SINGLE LIMIT (per occurrence) \$ 1,000,000</p> <p>BODILY INJURY (per person) \$</p> <p>BODILY INJURY (per occurrence) \$</p> <p>PROPERTY DAMAGE (per person) \$</p> <p>PROPERTY DAMAGE (per occurrence) \$</p>                                                                                                           |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <p><input checked="" type="checkbox"/> UMBRELLA LIAB</p> <p><input checked="" type="checkbox"/> EXCESS LIAB</p> <p><input type="checkbox"/> OCCUR</p> <p><input checked="" type="checkbox"/> CLAIMS-MADE</p> <p>DECL. RETENTION \$</p>                                                                                                            | X                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                  |                             |                             | <p>EACH OCCURRENCE \$ 2,000,000</p> <p>AGGREGATE \$ 2,000,000</p>                                                                                                                                                                                                                                                                    |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <p>WORKERS COMPENSATION AND EMPLOYERS LIABILITY</p> <p>ANY PROVISIONS/PARTIAL EXCLUSIONS OR EXCLUSIONS WHICH EXCLUDED (This is subject to the policy)</p> <p>DESCRIPTION OF OPERATIONS below</p>                                                                                                                                                  | Y/N                                                                                                                                                                                                                                                                                                           | N/A                                                                                                                                                                                                                                                              |                             |                             | <p><input checked="" type="checkbox"/> VAC. STAT. LTD. BEN. \$ 100,000</p> <p>E.L. EACH ACCIDENT \$ 100,000</p> <p>E.L. DISEASE - EA EMPLOYEE \$ 100,000</p> <p>E.L. DISEASE - POLICY LIMIT \$ 100,000</p>                                                                                                                           |
| <p>DESCRIPTION OF OPERATIONS, LOCATIONS &amp; VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)</p> <p>The following entities shall be included as Additional Insured: (1) Local Contracting Unit; (2) Local Contracting Unit Sdtdor; (3) Remington &amp; Vernick Engineers, and (4) Grant Funding Agency (if applicable).</p> <p>Reference the Project Name:</p>                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                  |                             |                             |                                                                                                                                                                                                                                                                                                                                      |
| CERTIFICATE HOLDER                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                               | CANCELLATION                                                                                                                                                                                                                                                     |                             |                             |                                                                                                                                                                                                                                                                                                                                      |
| <p style="font-size: 2em; text-align: center;">SAMPLE</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                               | <p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <p>AUTHORIZED REPRESENTATIVE</p> <p style="font-size: 2em; text-align: center;">SAMPLE</p> |                             |                             |                                                                                                                                                                                                                                                                                                                                      |

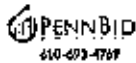
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ACORD 25 (2010/05)

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**EXHIBIT C**



Online Bid Management  
410-693-4767 <https://www.pennbid.net>

MICHAEL HELLER Log Out (Logout)

04/12/2023 10:59:05 AM EDT

Help (Help/Helpdesk)

Return to Bidding

Bid

NUMBER

Folsom Borough, Delaware County

TITLE

Folsom Residential Solid Waste and Recycling Collection Contract

PROCESS

One Step Unsealing

STATUS

Closed to Bidding

DESCRIPTION BID DOCUMENTS CLARIFICATIONS (FROM VENDORS) RESPONSE BIDDERS RESULTS CALENDAR

▼ BID RESULTS (3 records)

▲ NAME TOTAL BASE PRICE EXTERNAL COMMENTS  
▲ HH DISPOSAL \$2,133,000.00

| REFERENCE NUMBER | DESCRIPTION                          | QUANTITY | UNIT PRICE   | EXT PRICE    |
|------------------|--------------------------------------|----------|--------------|--------------|
| ▲ Alternative #1 |                                      |          |              |              |
| 101              | Solid Waste Collection 2/wk (Year 4) | 1.00     | \$571,000.00 | \$571,000.00 |
| 102              | Solid Waste Collection 2/wk (Year 5) | 1.00     | \$598,000.00 | \$598,000.00 |
| 103              | Recyclable Collection 1/wk (Year 4)  | 1.00     | \$217,000.00 | \$217,000.00 |
| 104              | Recyclable Collection 1/wk (Year 5)  | 1.00     | \$227,000.00 | \$227,000.00 |
| 105              | Bulk Trash Collection 1/wk (Year 4)  | 1.00     | \$0.00       | \$0.00       |
| 106              | Bulk Trash Collection 1/wk (Year 5)  | 1.00     | \$0.00       | \$0.00       |
| ▲ Base Bid       |                                      |          |              |              |
| 1                | Solid Waste Collection 2/wk (Year 1) | 1.00     | \$518,000.00 | \$518,000.00 |
| 2                | Solid Waste Collection 2/wk (Year 2) | 1.00     | \$514,000.00 | \$514,000.00 |
| 3                | Solid Waste Collection 2/wk (Year 3) | 1.00     | \$544,000.00 | \$544,000.00 |
| 4                | Recyclable Collection 1/wk (Year 1)  | 1.00     | \$198,000.00 | \$198,000.00 |
| 5                | Recyclable Collection 1/wk (Year 2)  | 1.00     | \$198,000.00 | \$198,000.00 |
| 6                | Recyclable Collection 1/wk (Year 3)  | 1.00     | \$207,000.00 | \$207,000.00 |
| 7                | Bulk Trash Collection 1/wk (Year 1)  | 1.00     | \$0.00       | \$0.00       |
| 8                | Bulk Trash Collection 1/wk (Year 2)  | 1.00     | \$0.00       | \$0.00       |
| 9                | Bulk Trash Collection 1/wk (Year 3)  | 1.00     | \$0.00       | \$0.00       |

▲ J. P. Vanders B Sons \$3,748,584.00

| REFERENCE NUMBER | DESCRIPTION                          | QUANTITY | UNIT PRICE   | EXT PRICE    |
|------------------|--------------------------------------|----------|--------------|--------------|
| ▲ Alternative #1 |                                      |          |              |              |
| 101              | Solid Waste Collection 2/wk (Year 4) | 1.00     | \$383,040.00 | \$383,040.00 |
| 102              | Solid Waste Collection 2/wk (Year 5) | 1.00     | \$215,840.00 | \$215,840.00 |
| 103              | Recyclable Collection 1/wk (Year 4)  | 1.00     | \$403,284.00 | \$403,284.00 |
| 104              | Recyclable Collection 1/wk (Year 5)  | 1.00     | \$424,544.00 | \$424,544.00 |
| 105              | Bulk Trash Collection 1/wk (Year 4)  | 1.00     | \$57,780.00  | \$57,780.00  |
| 106              | Bulk Trash Collection 1/wk (Year 5)  | 1.00     | \$60,672.00  | \$60,672.00  |

▲ Base Bid

|   |                                      |      |              |              |
|---|--------------------------------------|------|--------------|--------------|
| 1 | Solid Waste Collection 2/wk (Year 1) | 1.00 | \$601,312.00 | \$601,312.00 |
| 2 | Solid Waste Collection 2/wk (Year 2) | 1.00 | \$625,452.00 | \$625,452.00 |
| 3 | Solid Waste Collection 2/wk (Year 3) | 1.00 | \$653,248.00 | \$653,248.00 |
| 4 | Recyclable Collection 1/wk (Year 1)  | 1.00 | \$370,872.00 | \$370,872.00 |
| 5 | Recyclable Collection 1/wk (Year 2)  | 1.00 | \$381,072.00 | \$381,072.00 |
| 6 | Recyclable Collection 1/wk (Year 3)  | 1.00 | \$394,256.00 | \$394,256.00 |
| 7 | Bulk Trash Collection 1/wk (Year 1)  | 1.00 | \$52,104.00  | \$52,104.00  |
| 8 | Bulk Trash Collection 1/wk (Year 2)  | 1.00 | \$53,676.00  | \$53,676.00  |
| 9 | Bulk Trash Collection 1/wk (Year 3)  | 1.00 | \$55,296.00  | \$55,296.00  |

▲ Operator Trash & Recycling \$2,354,877.77

| SYNOPSIS NUMBER  | DESCRIPTION                          | QUANTITY | UNIT PRICE   | EXT PRICE    |
|------------------|--------------------------------------|----------|--------------|--------------|
| * Alternative B1 |                                      |          |              |              |
| 107              | Solid Waste Collection Zone (Year 0) | 1.00     | \$523,143.35 | \$523,143.35 |
| 108              | Solid Waste Collection Zone (Year 1) | 1.00     | \$548,629.96 | \$548,629.96 |
| 109              | Biogas Collection Plant (Year 0)     | 1.00     | \$208,034.18 | \$208,034.18 |
| 109A             | Biogas Collection Plant (Year 1)     | 1.00     | \$193,407.89 | \$193,407.89 |
| 109              | Bulk Trash Collection Plant (Year 0) | 1.00     | \$48,542.88  | \$48,542.88  |
| 109A             | Bulk Trash Collection Plant (Year 1) | 1.00     | \$48,728.00  | \$48,728.00  |
| * Base Bid       |                                      |          |              |              |
| 1                | Solid Waste Collection Zone (Year 1) | 1.00     | \$481,307.43 | \$481,307.43 |
| 2                | Solid Waste Collection Zone (Year 2) | 1.00     | \$473,895.10 | \$473,895.10 |
| 3                | Solid Waste Collection Zone (Year 3) | 1.00     | \$487,432.82 | \$487,432.82 |
| 4                | Biogas Collection Plant (Year 1)     | 1.00     | \$208,035.91 | \$208,035.91 |
| 5                | Biogas Collection Plant (Year 2)     | 1.00     | \$200,784.83 | \$200,784.83 |
| 6                | Biogas Collection Plant (Year 3)     | 1.00     | \$204,431.80 | \$204,431.80 |
| 7                | Bulk Trash Collection Plant (Year 1) | 1.00     | \$37,519.95  | \$37,519.95  |
| 8                | Bulk Trash Collection Plant (Year 2) | 1.00     | \$39,494.44  | \$39,494.44  |
| 9                | Bulk Trash Collection Plant (Year 3) | 1.00     | \$41,408.88  | \$41,408.88  |

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**EXHIBIT D**

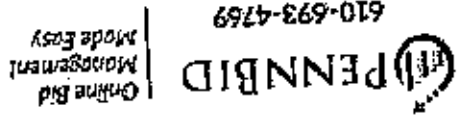
4/12/23, 11:12 AM



PennBid Bid Folcroft Borough, Delaware County

1 message

PennBid <snipen@pennbid.com>  
To: SKILLEEN@hondawaste.com



PennBid  
Folcroft Borough, Delaware County  
Folcroft Residential Solid Waste and Recycling Collection Contract

To: SAM KILLEEN  
Company: HH DISPOSAL  
Date: Wednesday, April 12, 2023 (UTC-05:00) Eastern Time (US & Canada)

From: Leanna Czubinski

Phone:  
Fax:  
Email: leanna.czubinski@hwa.com

Solicitation Number: Folcroft Borough, Delaware County  
Solicitation Title: Folcroft Residential Solid Waste and Recycling Collection Contract  
Bids Due Date: Wednesday, April 12, 2023 10:00:00 AM (UTC-05:00) Eastern Time (US & Canada)

Thank you for taking the time to submit a sealed bid for this solicitation. All bids / proposals are currently under review.

We are pleased to notify you that your company is among the apparent low bidders for this project. Please deliver original copies of all uploaded bid documents and bid security within 3 business days. Documents should be delivered to the attention of Edwin Veen-Choo at the offices of Remington & Verick Engineers at 555 Croft Road, Suite 401, King of Prussia, PA 19406.

Visit this bid on our website at <https://openbid.pennaware.com/Bids/93d5380c-1758-4a90-b610-0a973a11e9>

This is an automated message - please do not reply to this email.

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**EXHIBIT E**



April 12<sup>th</sup>, 2023

Sent

VIA pennbid

Borough of Folcroft Councilmembers  
1555 Elmwood Ave.  
Folcroft, Pennsylvania 19032

&

Remington & Vernick Engineers (RVE)  
Attn: Edwin Van-Otoo  
555 Croton Road Suite 301, King of Prussia PA 19406  
email: Edwin.vanotoo@rve.com  
fax: (610) 940-1161

**Re: Folcroft Residential Solid Waste and Recycling Collection Contract**  
**– Delaware County – 2023-2025** RVE File No. PDFCT017

Dear Folcroft Borough Council,

H&H Disposal Service, Inc. proposes to collect, remove, and haul with **rear load trash truck(s) that are (25) YD(s) and under** to the designated trash & recycle disposal site(s), all single stream recycle item(s), trash, and bulk item(s) strictly in accordance with the provided specifications, addendum(s), and all applicable Folcroft Borough ordinances for the years 2023-2025.

All work included within the RFP included herein is for the Three-Year Period beginning 2023 and ending in 2025. In addition, we have provided pricing for option year(s) 4 (2026) & 5 (2027), respectfully. **The collection schedule per household that the Borough of Folcroft currently has implemented, including Holidays, shall remain the same.**

In addition, H&H is available to begin the work immediately after the project is awarded and contract signed by both parties.

Please don't hesitate to contact me if you have any questions and/or wish to discuss this RFP further. On behalf of H&H Disposal Service, I must say that **since 2016**, we have enjoyed our partnership with the Borough of Folcroft!

**We hope to find a way to continue this successful partnership for many years to come.**

Please see the proposed price attached on the next page.



**- Proposed Price for the Three-year Period:**

**Year One**

Collection & Removal of Trash and Bulk Item(s): **\$518,000.00**

Collection & Removal of Single-stream recyclable item(s): **\$198,000.00**

**Year Two**

Collection & Removal of Trash and Bulk Item(s): **\$518,000.00**

Collection & Removal of Single-stream recyclable item(s): **\$198,000.00**

**Year Three**

Collection & Removal of Trash and Bulk Item(s): **\$544,000.00**

Collection & Removal of Single-stream recyclable item(s): **\$207,000.00**

**- Proposed Price for the Optional Two-year Period:**

**Year Four**

Collection & Removal of Trash and Bulk Item(s): **\$571,000.00**

Collection & Removal of Single-stream recyclable item(s): **\$217,000.00**

**Year Five**

Collection & Removal of Trash and Bulk Item(s): **\$598,000.00**

Collection & Removal of Single-stream recyclable item(s): **\$227,000.00**

Please be advised that **Bulk Waste Collection is included in the prices above**. H&H will include that collection services with the prices listed above for each year of service proposed above.

Respectfully,

Samuel D. Killeen, President

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**EXHIBIT F**



## Borough of Folcroft

1555 ELMWOOD AVENUE  
FOLCROFT, PA 19032

(610) 522-1305

Fax (610) 522-1114

May 5, 2023

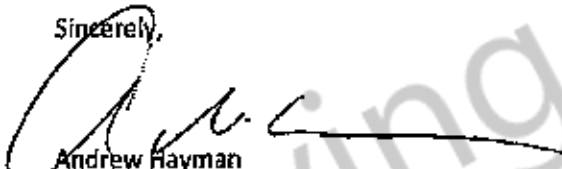
Sam Killeen  
H and H Waste  
P.O. Box 1235  
Sharon Hill, PA 19079

Dear Sam,

As we just discussed, your bid for trash collection was rejected by the Engineer. Folcroft Council requests a 90 day transition period. As also discussed, please abide by the requested 90 day transition period which concludes July 31<sup>st</sup>, 2023. Please see the attached letter from Edwin Van-Otoo regarding your bid.

Thank you for your service to the community.

Sincerely,



Andrew Hayman  
Borough Manager



**REMINGTON  
& VERNICK  
ENGINEERS**

Croton Road Corporate Center  
555 Croton Road, Suite 401  
King of Prussia, PA 19406  
O: (610) 940-1050  
F: (610) 940-1151

May 3, 2023

Andrew Hayman  
Borough Manager  
Folcroft Borough  
1555 Elmwood Ave  
Folcroft, PA 19032

RE: Bid Rejection  
Residential Solid Waste & Recycling Collection  
1555 Elmwood Ave  
Folcroft, PA 19032  
Borough Manager  
RVE File#: PDFCT017

Dear Mr. Hayman:

Remington & Vernick Engineers (RVE) has reviewed the bids received on April 12, 2023, for the above referenced project, and a discrepancy in the bid submitted by the apparent low bidder, HH Disposal was discovered. Therefore, the bid for HH Disposal has been rejected. The bidders were required to submit cost for the following items:

Base Bid

Solid Waste Collection 2/wk (Year 1)  
Solid Waste Collection 2/wk (Year 2)  
Solid Waste Collection 2/wk (Year 3)  
Recyclable Collection 1/wk (Year 1)  
Recyclable Collection 1/wk (Year 2)  
Recyclable Collection 1/wk (Year 3)  
\*Bulk Trash Collection 1wk (Year 1)  
\*Bulk Trash Collection 1wk (Year 2)  
\*Bulk Trash Collection 1wk (Year 3)

Alternate Bid

Solid Waste Collection 2/wk (Year 4)  
Solid Waste Collection 2/wk (Year 5)  
  
Recyclable Collection 1/wk (Year 4)  
Recyclable Collection 1/wk (Year 5)  
  
\*Bulk Trash Collection 1wk (Year 4)  
\*Bulk Trash Collection 1wk (Year 5)

\*Items not specifically provided as requested per bid documents.

HH Disposal did not provide the Bulk Trash Collection cost for Years 1 -3 in the Base Bid nor the Bulk Trash Collection cost for Years 4 -5 in the Alternate Bid as requested. Therefore, the bid was awarded to the second apparent low bidder without discrepancies in the bid submitted.



Bid Rejection  
Residential Solid Waste & Recycling Collection  
1555 Elmwood Avenue  
Page 2 of 2

Should you have any questions, please feel free to contact our office at (610) 940-1050.

Sincerely,  
**REMINGTON & VERNICK ENGINEERS**  
By

Edwin Van-Otto, P.E., MSEM  
Borough Engineer

Enclosure

cc: Christopher J. Fazio, P.E., C.M.E., Executive Vice President

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**EXHIBIT G**



◀ Return to Bid List

 **Bid**

NUMBER

**Folcroft Borough, Delaware County**

TITLE

**Folcroft Residential Solid Waste and Recycling Collection Contract**

PROCESS

One Step Unsealing

STATUS

Pending Award

DESCRIPTION

BID DOCUMENTS

CLARIFICATIONS (FROM VENDORS)

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**EXHIBIT H**

## FORM OF PROPOSAL

TO: Folcroft Borough  
1555 Elmwood Avenue  
Folcroft, PA 19032

FROM: H and H Disposal Service, Inc. / Samuel D. Killeen  
Ave "A" and Darby Creek Rd., PO Box 1235  
Sharon Hill, PA 19079 www.HandHWaste.com  
PHONE #: (610) 588 1400  
FAX #: (610) 588 9999

Dear Council Members:

We, the undersigned, hereby proposes to collect, remove and haul to the designated Delaware County Disposal Site, all ashes, rubbish, trash and garbage and recyclable material, strictly in accordance with these specifications and all applicable Borough Ordinances, as follows:

A. The five year period beginning January 1, 2016 and ending December 31, 2020 for the yearly sum of:

|            |               |
|------------|---------------|
| Year One   | \$ 224,000.00 |
| Year Two   | \$ 224,000.00 |
| Year Three | \$ 233,000.00 |
| Year Four  | \$ 245,000.00 |
| Year Five  | \$ 251,000.00 |

B. Recycling Trash Collection to be made twice monthly

|        |                      |
|--------|----------------------|
| Year 1 | \$ Included with (A) |
| Year 2 | \$ Included with (A) |
| Year 3 | \$ Included with (A) |
| Year 4 | \$ Included with (A) |
| Year 5 | \$ Included with (A) |

C. Special Collection to be on a call basis, per resident -

|        |                   |
|--------|-------------------|
| Year 1 | \$ 15.00 per item |
| Year 2 | \$ 15.00 per item |
| Year 3 | \$ 20.00 per item |
| Year 4 | \$ 20.00 per item |
| Year 5 | \$ 25.00 per item |

ALTERNATE #1 Regular trash pick-up - seasonal - DEDUCT

|        |           |
|--------|-----------|
| Year 1 | \$ No Bid |
| Year 2 | \$ No Bid |
| Year 3 | \$ No Bid |
| Year 4 | \$ No Bid |
| Year 5 | \$ No Bid |

ALTERNATE #2 Recycling Trash Collection to be made weekly

|        |                      |
|--------|----------------------|
| Year 1 | \$ Included with (A) |
| Year 2 | \$ Included with (A) |
| Year 3 | \$ Included with (A) |
| Year 4 | \$ Included with (A) |
| Year 5 | \$ Included with (A) |

The above bid prices shall include the collection and disposal of trash items as described Borough-wide on the first pickup day of the month or the following day. No commercial trash shall be included in this contract.

## AGREEMENT

ARTICLES OF AGREEMENT made and concluded this \_\_\_\_\_ day of \_\_\_\_\_, 2015, between H&H Disposal Service, Inc., Ave "A" & Darby Creek Road, P. O. Box 1235, Sharon Hill, PA 19079, party of the first part, hereinafter called the Contractor, and Folcroft Borough, 1555 Elmwood Ave., Folcroft, PA 19032, party of the second part, hereinafter called the Owner.

The Contractor, for and in consideration of the payments mentioned to be made in Article 2 by the Owner, agrees to and with the Owner to complete all of the work or such part as may be directed by the Owner in accordance with the plans mentioned and the preceding specifications, under the supervision and to the satisfaction of the Engineer and to the approval of the Owner.

The Owner agrees to pay the Contractor for the work embodied in this Contract and described in the specifications, the prices given in the bidding sheet, which is made a part of this Contract.

Should the Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen, or of materials of the proper quality, or fail in any respect to prosecute the work with promptness and diligence, or fail in the performance of any of the agreements herein contained, such refusal, neglect or failure being certified by the Engineer, the Owner shall be at liberty after 3 days written notice to the Contractor to provide any such labor or materials and to deduct the cost thereof from any monies then due or thereafter to become due to the Contractor under this Contract, and if the Engineer shall certify that such refusal, neglect or failure is sufficient ground for such action, the Owner shall also be at liberty to terminate the employment of the Contractor for the said work and either call upon the Surety to complete said Contract or to enter upon the premises and take possession for the purpose of completing the work included under this Contract, of all materials, tools and appliances thereon and to employ any other person or persons to finish the work and to provide the materials therefore, and in case of such discontinuance of the employment of the Contractor shall not be entitled to receive any further payments under this Contract until said work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under this Contract shall exceed the expenses incurred by the Owner in finishing the work, such excess shall be paid to the Contractor by the Owner, but if such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expenses incurred through such default shall be audited by the Engineer, whose certificate thereof shall be conclusive and binding upon the parties.

The Contractor agrees not to sublet any portion of the Contract, contracts for furnishing and delivery of materials and machinery to be excepted, without the consent of the Owner, and the Contractor further agrees to hold himself responsible for the performance of any work he may sublet.

It is further agreed between the parties hereto that no certificate given or payment made under this Contract, except the final payment, shall be conclusive evidence of the performance of this Contract either wholly or in part, and that no payment shall be construed to be an acceptance of defective work or improper material.

It is further agreed between the parties hereto that when all the work embraced in this Contract shall have been completed agreeably to the specifications and in accordance with the directions and to the satisfaction of the Engineer and to the approval of the Owner, there shall be made by the Engineer a final estimate of the quantity, character and value of said work in accordance with this Agreement, when the balance appearing to be due to the Contractor shall be paid upon the Contractor, first giving a release under seal of the Owner from all claims and demands whatsoever growing in any manner out of this Agreement, and secondly the Contractor shall produce satisfactory evidence of the payment of all claims due for labor or materials furnished in the performance of the Contract.

The Contractor further agrees that before any work is done under this Contract that he will furnish to the Owner two bonds in form with corporate surety satisfactory to the Owner. One of the bonds in the full sum of the Contract \$224,000.00 Base Bid and Alternate #2 (price included in base bid) conditioned for the full and faithful performance of the Agreement and compliance with all terms and conditions herein contained as well as for the maintenance of said work for a period of one year, including the indemnification of the Owner by the Contractor as herein provided; and the other in the full sum of the Contract \$224,000.00 Base Bid and Alternate #2 (price included in base bid) conditioned for the prompt payment of all claims for labor and materials entering the work provided for in this Agreement, such bonds to be delivered to the Owner within 10 days after the date of Agreement, and before any work under this Agreement shall be done.

IN WITNESS WHEREOF, the parties of this Agreement have set their hands and seals the day and date first above mentioned.

WITNESS AT SIGNING.

Samuel Kelleen  
President  
H&H Disposal Service, Inc.

Michael Heller  
Attorney  
Michael Heller

[Signature]  
President  
Folcroft Borough

Our certified check in the amount of \$500.00, or bid bond in the amount of five percent (5%) of the highest bid is enclosed. We agree to forfeit same to the Borough of Folcroft as liquidated damages if we fail to execute a contract when awarded.

DATE: November 4th, 2015.

BIDDER: H AND H DISPOSAL SERVICE

ADDRESS: AVE "A" AND DARBY CREEK rd.

PO Box 1235 Sharon Hill, PA 19079

BY Samuel D. Killeen

TITLE President

CORPORATE  
SEAL IF APPLICABLE

We hereby acknowledge receipt of Addendum No. \_\_\_\_\_ dated \_\_\_\_\_.

Copying Prohibited

**H & H**  
Disposal Service, Inc.  
(610) 586 1400

November 5<sup>th</sup>, 2015

Folcroft Borough  
1555 Elmwood Ave.  
Folcroft, Pennsylvania 19032

Dear Council,

H & H Disposal Service proposes to collect, remove and haul to the designated trash & recycle disposal site, all single stream recycle & trash strictly in accordance with the provided specifications and all applicable Folcroft Borough ordinances for years 2016 - 2020.

A. Five Year Period beginning January 1<sup>st</sup>, 2016 and ending December 31<sup>st</sup> 2020:

Year One: \$224,000.00

*Two Hundred and Twenty-four Thousand & zero cents*

Year Two: \$224,000.00

*Two Hundred and Twenty-four Thousand & zero cents*

Year Three: \$233,000.00

*Two Hundred and Thirty-three Thousand & zero cents*

Year Four: \$245,000.00

*Two Hundred and Forty-five Thousand & zero cents*

Year Five: \$251,000.00

*Two Hundred and Fifty-one Thousand & zero cents*

**Option B** for recycling collection twice monthly is included in the prices above, or, if the Borough elects for **Alternate #2**, recycling collection weekly, H & H Disposal will include that service as well with the prices listed above for each year of the 5 year term.

Yours Truly,

  
Samuel D. Killeen, President



PO Box 1235  
Sharon Hill, PA 19079  
Office: (610) 586 1400 Fax: (610) 586 9999  
www.HandHWaste.com  
*Put Your Cans In Good Hands!*



## Consent of Surety

KNOW ALL MEN BY THESE PRESENTS, that for and consideration of the sum of One Dollar (\$1.00), lawful money of the United States of America, the receipt of whereof is hereby acknowledged, paid the undersigned, and for other valuable consideration, the

United States Surety Company

20 W. Aylesbury Road TimoniumMD 21093

existing under the laws of the State of Maryland and licensed  
to do business in the Commonwealth of Pennsylvania certifies and agrees, that if  
the contract for Borough of Folcroft

for Trash Collection 2016-2020

is awarded to H and H Disposal Service, Inc.

the undersigned will execute the bond or bonds as required of the contract documents and will become Surety in the full amount set forth in the contract documents for the faithful performance of all obligations of the Bidder.

Signed, sealed and dated this 5th day of November, 2015.

United States Surety Company

By

Gemma B. Fendler  
Gemma B. Fendler, Attorney-in-Fact

(To be accompanied by the usual proof of Authority of Officers of officers of the Surety Company to execute same)

\*\*If successful bidder, performance and or payment bonds will be limited to a 1-year term, with language included that states non-renewal or replacement for subsequent contract periods will not be considered an event of default covered by the bond.

Section 003300 Bidder Qualifications - FOLCROFT BOROUGH  
Question # 12 & 13

**Samuel D Killeen - H&H Disposal**

**SKILLS & ABILITIES**

Waste Management, Recycling, Fleet Management, MIS, OSHA Certified, Project Management, Operations Management, Organizational Management, Human Resources, Small Business Financial Management, Negotiation, Leadership, CDL Certified & DOT Inspection Mechanic(PA)

**EXPERIENCE**

**PRESIDENT, H AND H DISPOSAL SERVICE, INC.**

November 2009 to present

As the active President and Operations Manager of H and H Disposal my duties include but are not limited to the oversight of all waste collection and disposal operations. Examples of which include transportation, route management, employee development, & truck maintenance. I am also responsible for consulting with residents, customers and municipalities H and H is contracted with. In addition to that is to ensure compliance with current legislation in the transportation, handling and disposal of waste in the state of Pennsylvania, this includes EPA, DEP, & DCSWA (Delaware County Solid Waste Authority).

**EDUCATION**

**WILMINGTON UNIVERSITY, NEW CASTLE DE-- B.S., IN ORGANIZATIONAL MANAGEMENT**

This degree helps to develop the relevant skills needed to manage organizations in today's job market, and to develop strong communication and leadership skills and an ethical approach to business and life. This program starts with emphasis on organizational behavior, communications, ethics, and human resource management skills and the information systems necessary to coordinate the management of these functions. The sequence continues with emphasis on the management skills needed for marketing, finance, global business challenges, and operations and project management.

**REFERENCES**

Jack Ryan  
Township Manager of Darby Twshp.  
610 586 1514

Joe Possenti  
Manager of East Lansdowne  
610 623 7131

# H&H

Disposal Service, Inc.  
(610) 586 1400

## Contract Status Inquiry

To: Folcroft Borough  
1555 Elmwood Ave  
Folcroft, PA 19032

Date: 7/5/16

Contractor: H&H Disposal Service, Inc.  
Avenue A & Darby Creek Rd.  
Sharon Hill, PA 19079

Project: Collection of Residential Trash and Recyclables

Obligee Satisfied with Contractor Performance? Yes

Contract Price: \$ 1,173,000.<sup>00</sup>

Total Amount Paid to Date: \$ 111,996.<sup>00</sup>

Percent Complete: % 10

Total Amount Billed to Date: \$ 111,996.<sup>00</sup>

Any known issues of payment between the contractor and its sub or suppliers? No

Is the Work Progressing Satisfactorily? Yes

How Would You Rate Contractor Performance? Excellent

Any Additional Comments:

Name: MARIONNE FRENCH

Title: BOROUGH MANAGER

Phone: 610 522 1305

Fax: 610 522-1114

Signature: Marionne French

Date: 7/8/16

  
PO Box 1235  
Sharon Hill, PA 19079  
Office: (610) 586 1400 Fax: (610) 586 9999  
www.HandHWaste.com  
Put Your Trash In Good Hands!